S. HRG. 99-247

NOMINATIONS OF ROGER W. JEPSEN, JOSEPH A. GRUNDFEST, AND DR. PAUL H. FREEDENBERG

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

THE NOMINATIONS OF ROGER JEPSEN, TO BE A MEMBER OF THE NATIONAL CREDIT UNION ADMINISTRATION BOARD; JOSEPH GRUNDFEST, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION; AND DR. PAUL FREEDENBERG, TO BE AN ASSISTANT SECRETARY OF COMMERCE

OCTOBER 2, 1985

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

U.S. GOVERNMENT PRINTING OFFICE

53-559 O WASHINGTON : 1985

S241-5

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WEDNESDAY, OCTOBER 2, 1985

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met at 9:30 a.m., in room SD-538, Dirksen Senate Office Building, Senator Jake Garn (chairman of the committee) presiding.

Present: Senators Garn, D'Amato, Gorton, Mattingly, Hecht, Proxmire, Cranston, and Dixon.

Also present: Senators Grassley, Harkin, and Johnston.

OPENING STATEMENT OF CHAIRMAN GARN

The CHAIRMAN. The Banking Committee will come to order.

The purpose of this morning's hearing is to consider the nominations of three individuals. First of all, Senator Roger Jepsen, to be a member of the National Credit Union Administration Board; Joseph Grundfest to be a member of the Securities and Exchange Commission; and Dr. Paul Freedenberg, to be an Assistant Secretary of Commerce for Trade Administration.

We will take those nominations in that order, first hearing from our former colleague, Senator Roger Jepsen, and it appears that he has a former colleague to introduce him.

Before we turn to Senator Grassley, Senator Proxmire, do you have any comments you wish to make?

Senator PROXMIRE. No, Mr. Chairman.

The CHAIRMAN. Senator Dixon.

Senator DIXON. I would like to put a statement in the record, Mr. Chairman.

[The complete prepared statement follows:]

STATEMENT OF SENATOR ALAN DIXON

Senator DIXON. Mr. Chairman, I am pleased to be here this morning as the committee conducts its hearings on the nominations of Paul Freedenberg to be an Assistant Secretary of Commerce, Roger Jepsen to the Board of the National Credit Union Administration, and Joseph Grundfest to be a member of the Securities and Exchange Commission.

I congratulate the Senator from Iowa on his nomination. I am sure he will be a distingushed addition to the Board of the NCUA.

I would also like to congratulate Paul Freedenberg on his nomination to be an Assistant Secretary of Commerce. His service as a member of the staff of this committee has been exemplary. His knowledge of trade policy is unsurpassed; his judgment and good advice have been invaluable to me and my staff on a variety of trade matters, particularly the legislation reauthorizing the Export Administration Act. Of course, his abilities come naturally, after all, he's from Illinois. I'm sorry the Banking Committee will be losing Paul's services. And I wish him well in his new position. I'm sure the committee will have a continuing need for his expertise.

I look forward to the comments from all the nominees this morning and I look forward to early and favorable action on these appointments by the committee.

The CHAIRMAN. Senator Grassley.

STATEMENT OF CHARLES E. GRASSLEY, U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Thank you, Mr. Chairman.

Mr. Chairman, Senator Proxmire, Senator Dixon, it's obvious that since Senator Jepsen is a former colleague of ours, that I don't need to be here for the purpose of introducing him to you, but I do want to take advantage of the opportunity to support his nomination and tell you that I have known him for a quarter of a century. In fact, we were born only 5 miles apart. Our family farms were that close. Politically, I first became acquainted with him when he was a leader in Black Hawk County, IA, where he was born and was in business. Later he moved to Davenport, and then he came to the legislature and did an outstanding job as a State senator. He went on to be Lieutenant Governor, and then came to the U.S. Senate.

In all that public service, I've known him to do the very best job possible and in my State under certain circumstances that isn't always easy. I know that he's going to fulfill his responsibilities in this Presidential appointment and will carry out to the ultimate those responsibilities given him by law. He will go beyond that to do the outstanding job in this position that he has done as U.S. Senator, Lieutenant Governor, and State legislator.

Besides this, he has an outstanding record in private business in insurance and in other types of business which also makes him well qualified for this position.

The CHAIRMAN. Thank you, Senator Grassley.

Senator Harkin.

STATEMENT OF TOM HARKIN, U.S. SENATOR FROM THE STATE OF IOWA

Senator HARKIN. Thank you, Mr. Chairman and members of the committee. I'm here this morning to join my colleague, the distinguished senior Senator from my State of Iowa, Senator Charles Grassley, in support of the nomination of a fellow Iowan and former U.S. Senator from our State, Roger Jepsen, to be Chairman of the National Credit Union Administration.

As Senator Grassley said, Senator Jepsen has devoted nearly 20 years of his life to public service at all levels of government. First, as a supervisor in Scott County, IA; next, as a State senator from eastern Iowa; he was then elected Lieutenant Governor of Iowa, and after serving in that position for one term, he was elected U.S. Senator and served in this body for 6 years.

In the private sector, Senator Jepsen was an active businessman. So he brings to this position, Mr. Chairman, not only his background and knowledge of government, but also his experience in the private sector.

Unlike my colleague, Senator Grassley, I did not serve in the State legislature, so I didn't serve with Senator Jepsen when he was there. However, I was active in Iowa at the time and I can say that even though we come from different political parties and different political persuasions, Senator Jepsen carried out his duties in all levels of government honorably, and carried out his functions in the private sector in a manner befitting good business practices.

I just want to say that I think that in this position as head of the National Credit Union Administration that Senator Jepsen does indeed bring a lot of knowledge and expertise in these matters. So I recommend him to this committee and hope that this committee will act expeditiously on his nomination.

The CHAIRMAN. Thank you, Senator.

Gentlemen, we would like to invite you to stay if you desire. We also recognize there are other committees, so at your discretion you can stay, you can join us up here, or leave as you desire, but we appreciate you being here.

Senator GRASSLEY. If there won't be any questions asked of us, and usually there are not, I will go.

Senator JEPSEN. Thank you.

The CHAIRMAN. Senator, before you begin, could I have you stand and be sworn.

[Whereupon, the witness was duly sworn.]

The CHAIRMAN. Please proceed.

STATEMENT OF ROGER W. JEPSEN, NOMINATED TO BE BOARD MEMBER, NATIONAL CREDIT UNION ADMINISTRATION

Senator JEPSEN. Mr. Chairman, distinguished members of this committee, I am pleased and honored to appear before the Banking Committee this morning as the nominee to the Board of the National Credit Union Administration.

All of us here today understand the serious and exciting challenges presented by deregulation to our Nation's financial industry. Because any type of deregulation fosters creative tension, regulatory agencies must adjust their thinking and I see the National

Credit Union Administration proceeding successfully with this adjustment.

I plan on continuing a policy of prudent regulation for credit unions in an overall atmosphere of a creative and professional thinking.

With fewer regulations to enforce today, the emphasis at the National Credit Union Administration has shifted to a stronger examination program in order to ensure that safety and soundness remain the hallmark of the credit union movement. I am committed to the continuation of excellence in our examiner force.

NCUA FUND IS STRONGEST IN ITS HISTORY

As members of the committee are aware, the insurance fund of the NCUA was capitalized this year bringing the fund to its strongest level in its history. I will insist that we maintain the strength of that fund knowing full well that we are ultimately dealing with people's lives, not just numbers on a page or a cold statistic in a computer bank.

The credit union movement itself is based on the philosophy that cooperative action can provide credit for people otherwise unable to obtain it. I have discovered that the credit union movements' commitment to that philosophy is deep, is real, and in a sense, three-dimensional, because with credit unions people always come first. The credit union movement balances the idea with the practical and as long as that balance is maintained the movement will flourish.

So, Mr. Chairman, I thank you and your committee for the opportunity to appear before you and I assure you that I will perform all the duties and responsibilities as a board member of the NCUA to the best of my ability.

The CHAIRMAN. Thank you very much.

First of all, I'm sure that you will not only avoid any conflicts of interest but even the appearance of conflict of interest in your new position; is that correct?

Senator JEPSEN. That's correct.

The CHAIRMAN. And if confirmed, do you agree to appear before this committee and other committees of Congress if requested?

Senator JEPSEN. I do.

The CHAIRMAN. As you know, Senator, this committee is in the process of extending conservatorship authority for credit unions.

In your opinion, how important is this to the operation of the share insurance fund?

Senator JEPSEN. It is a very important tool and I know that it's due to expire on October 15. Conservatorship has proven to be a most effective tool for the NCUA Board in better assuring the safety and soundness of credit unions.

I am pleased to see that it has been given top priority and do hope that it will be extended.

The CHAIRMAN. We have had a continual recommendation from Treasury through several administrations that credit unions should be taxed. The most serious proposal was a year ago and Senator Dole of the Finance Committee was considering imposing a tax again. Rather than doing that, at the time it was proposed there

was about 300 million dollars' worth of taxes and there was a voluntary agreement worked out with the credit unions of the country and the Banking Committee that where we increased their insurance fund to the tune of nearly $1 billion.

I felt very strongly that this was a good tradeoff that counted against the deficit.

Despite the fact that that arrangement was made last year, we once again have a proposal to tax credit unions.

I would assume that you would believe that what we worked out in a voluntary manner is a much better alternative in shoring up the share draft insurance, the net worth area, or the capital requirements I should say, is better than imposing a tax. Would that be your view?

Senator JEPSEN. Well, as the Chairman-designee of the Board, the Board has taken no official position as a regulatory body. I would expect that would continue to be our position. It certainly is at this time.

Personally, I think and have been on record as saying that if all the facts objectively are examined and focused in with proper perspective, the role that the credit unions play in our society by way of extending credit to those who otherwise might not be able to get it, and with the volunteerism, as you've indicated, and the do-it-yourself attitude that they have displayed, they would be well advised to consider very carefully before anyone should ever move to tax them.

The CHAIRMAN. Well, I would suggest that if Congress in its wisdom decided to tax, that possibly the other side of the coin ought to be pulled back and the voluntary $1 billion that was put in might be considered. I have certainly made my feelings known to the Finance Committee on that issue, that you can't have it both ways, expect the $1 billion of voluntary contributions and tax, too.

Senator JEPSEN. Well, Mr. Chairman, I appreciate and am pleased to hear your comments on this subject. The discussion has, of course, come up often and will in the future. It does seem to me that when the argument which is often used say they should be taxed because they do the things the other thrifts do, I think we must make sure that the story is told about the things they do that the other thrifts for one reason or another either cannot do or will not do, and that is very key in our basic society here. You know a man has four needs: One is spiritual, one is social, one is physical, and one is economic; and without that keystone of an economic base and access to credit there are millions of people who would, for lack of a better term, not have the affluence that many do and have access to credit that are being served by the credit union movement. And history, precedent, facts today show that.

And with deregulation, I think now more than ever, if I might use that term, the need for credit unions is greater than it's ever been.

The CHAIRMAN. Thank you.

Senator Proxmire.

Senator PROXMIRE. Thank you, Mr. Chairman.

IMPORTANCE OF CREDIT UNIONS

Senator Jepsen, I'm delighted to hear your response to Senator Garn. I think many people in this country don't appreciate how very, very important credit unions are. We have more credit unions, as you know, than we have commercial banks by far. There are over 20,000 credit unions, compared to 14,000 commercial banks. We have more credit unions than savings and loans. Credit unions have $104 billion in assets. So it's a very, very critical part of our financial operation. We're conscious of this in Wisconsin because we have their international headquarters in Madison, as you know. For many, many Americans a credit union is their bank.

On June 28, I wrote to you as the Chairman-designate of the National Credit Union Administration and I noted that the FDIC has adopted a new policy of disclosing the names of institutions and individuals against whom final enforcement actions have been levied. I support this policy because I believe the public has the right to know whether particular institutions are being operated in a safe and sound manner.

Since the public might be misled by nonuniform disclosure rules, I asked you whether you supported a similar disclosure policy of credit unions.

What's your position on that?

Senator JEPSEN. Generally, I certainly do, especially in the area as it would serve as a deterrent, and I expect that that's one of the several reasons that you have for supporting it.

We are studying it, as I indicated to you in response to your letter, to formulate some policy or some executive direction on this. I assure you that we will come down on the side of disclosure where in fact it will deter and contribute to the safety and soundness that we're charged with for credit unions and their many shareholders across the country. As a deterrent, I think it's a must.

There may be individual cases, which I'm sure you fully appreciate, where the timing especially for full disclosure could be, if we had it very rigid, could be harmful to working out a merger or could be harmful to getting the maximum out of a liquidation or whatever. But barring that, I do support that.

Senator PROXMIRE. I'm glad to hear your response to Senator Garn on taxation. I understand that you do not favor taxing credit unions. Is that correct?

Senator JEPSEN. Personally, I do not. I think, as Chairman-designate of the regulatory board, we do not have a formal policy nor do I think it probably appropriate that we give one. But those of us who have become well acquainted and who are working with and know the full story of credit unions, I think to the person, come down on the side of don't fix something that isn't broken.

Senator PROXMIRE. Well, that's good to hear because I understand that the administration has proposed a tax on credit unions and I think that's a misunderstanding of what credit unions are. They are cooperative groups that do operate strictly for the benefit of the people they serve and who have a common bond. They don't operate as commercial banks do. Commercial banks operate for profit and I'm delighted they do it and that's a fine incentive; but

the credit unions do not. Therefore, I think they're in a different category.

Senator JEPSEN. I think there's testimony that was given that sort of reinforces what has been said by both the distinguished chairman, Senator Garn, and yourself, Senator Proxmire, in the taxation area. When a question was asked, I believe by Senator Symms of other financial institution representatives, as to whether they feel that they would make a loan of $300 or $400 for a home improvement—I'm paraphrasing a little bit—when someone had a $100 balance in their account and it had never gotten over $150. These are the type of loans that families need and are made every day and are made 365 days out of the year I might add. We often point toward the fact that the Navy Credit Union made 52 loans on Christmas Day and I don't think that any of the other financial institutions were in business on that basis that day.

Senator PROXMIRE. As you know, Senator Jepsen, every State requires its State-chartered credit unions to be insured but some States permit them to be insured by private insurance funds.

Since the thrift problems in Ohio and Maryland have illustrated weaknesses in the private insurance concept, some States, including my own State of Wisconsin, are considering or have already passed legislation requiring State-chartered credit unions to seek Federal insurance.

Do you favor that development or do you think the preservation of private- or State-insured credit unions is essential to preserving our dual chartering system?

Senator JEPSEN. Well, Senator, the development has come about because of the problems and the attendant publicity. As recently as last night, I watched on the television the big meeting that was held next door here where people were demanding their funds and I saw a single-parent woman with two children who was living on the interest in their thrift who now cannot have it. That type of publicity has primarily been the reason for the movement toward getting under the Federal share insurance fund.

For example, in the year just finished we had 511 conversion applications. That's compared to five the year before. And in the State of Wisconsin we have 556 potential and 449 are being processed, so in the next 2 months we know we're going to have 154 applications just from your State, Senator, alone coming in.

PURPOSE OF INSURANCE FUND IS SAFETY AND SOUNDNESS

I believe that diversity is one of the greatest strengths we have in this great country of ours and I am a champion of the private sector and of States' rights. My record, I think, indicates that. I make no apologies for it. And in diversity there's great strength as long as you have a singleness of purpose, and certainly the purpose for your private insurance share insurance funds is to provide for the safety and soundness.

Many of the principles and the mechanics and the sophistications of a share insurance fund that we now have in our National Credit Union share insurance fund were borrowed or copied, certainly used as reference base points, when it was developed—they

were borrowed from the private sector. That strength I think we should not dilute.

By the same token, I feel that the movement that's taken place is something that is certainly beyond the control of the Chairman of the National Credit Union Administration.

My job—our job at the National Credit Union Administration is to make sure that we have both the personnel in the right place at the right time, as we've had in your State where we've had to put extra crews in and we've had to bring people in out of retirement, we have to move rather quickly, but we have to provide quality examination. So we're coping and meeting the problem, but the problem is a national one and it gives me no pleasure to discuss it—our brother or sister financial institutions, we all have some common bond and we all want safety and soundness, and I hope and will do everything I can to form a liaison between the thrifts and other regulatory boards that we might exchange ideas and communicate and do everything we can to provide for safety and soundness, not only within our own organizations but if there's any way we can cooperate to provide it across the board in this country.

Senator PROXMIRE. I welcome that response, but frankly I feel it's so important to have that safety and soundness, to have it rock bottom assured, that I think States are right in moving in the direction of Federal insurance because private insurance, whatever you can say for it has failed in the past and will fail probably sometime in the future. By and large, most of our commercial banks are federally insured. It seems to me we ought to apply that to credit unions too and encourage them to become federally insured.

Let me ask you another question. In determining whether State-chartered credit unions qualify for Federal insurance, is the National Credit Union Administration relying on previously reviewed State documentation or is your organization examining each credit union anew?

Senator JEPSEN. The answer to that is both. It depends on the individual situation. As in any organization, there are areas, individuals, and regions where you have stronger and more thorough exams. There is no blanket policy I could given other than to say that we take each case individually and study it very carefully.

Senator PROXMIRE. Won't this influx of new credit unions under your agency's supervision stress your present examination resources?

Senator JEPSEN. Yes, sir. There has been a project ongoing for several months now where we have looked into both the recruiting, the training, and upgrading of our examiners and our examination process. We have coordinated and visited with NASCUS, the State people, on that, and where you have the State-chartered credit union who is a member of the Federal share insurance fund the examinations—there can be duplications. We hope to get to a point where we work together to again efficiently and effectively and with credibility and confidence be able to utilize State examiners' reports completely. At this point in time, without being judgmental about it, just on a realistic basis, each case would have to be handled on an individual basis, Senator.

Senator PROXMIRE. My time is up.

The CHAIRMAN. Senator Mattingly.

Senator MATTINGLY. Thank you, Mr. Chairman.

I would just like to welcome Senator Jepsen and hope you have a speedy confirmation. I'd just like to say that this will be the third voice up here to say that credit unions should retain their tax-exempt status and I would hope that your comment to don't fix something that's not broke means that we now have four votes for that position.

I'd just like to ask you one question. As we all know, the credit unions have a very unique character in serving a particular group of individuals. Do you see them retaining that character or do you think that they will become more like S&L's or banks?

Senator JEPSEN. I have been on record with all of the national associations in saying to them when I've been asked to address them, which over the last 3 months I have on several occasions, said that if they maintain the basic philosophy—and I see no deviating away from this anywhere at any time—of people and service to people, that they will continue to grow and prosper. I have yet to meet—and I have met thousands literally since April 18—any member of any credit union organization that even in the least little bit would indicate that they would vary from that basic philosophy of serving people, volunteerism, and trying to make credit available to those who otherwise would not be able to obtain it.

So I don't see a change at all. In fact, I think a reinforcement and a communication of that commitment to people will be intensified. You know, the law of something causing something else to happen, the fact that they're having great discussions now and debates and lots of publicity on whether they should be taxed gives a chance for them to sort of ventilate or air what the credit unions are all about. And in doing so, they're doing something they should have done before they even talked about taxation and that is, they have a wonderful story to tell, a wonderful history of helping people, and in this age of technology, with computers and the impersonal way that we're moving in all areas because of mechanization and deregulation to a degree, as I indicated earlier, more than ever, I think that the basic philosophy must be reinforced and communicated and the story told often. So there's no deviation.

Senator MATTINGLY. Thank you. That's the only question I have, Mr. Chairman, although I would like personally to welcome Mrs. Jepsen also to the hearing. We're mighty proud of you also. Thank you.

The CHAIRMAN. Senator Gorton.

Senator GORTON. Thank you, Mr. Chairman. I have no questions, but I am delighted to welcome both the Jepsens here and hope for a speedy confirmation.

The CHAIRMAN. Senator Jepsen, I would expect a speedy confirmation. I certainly know of no opposition. I certainly am pleased that the President has nominated you and I certainly enjoyed my association with you 6 years in the Senate and because of your new position and my responsibility here as chairman of the Banking Committee I look forward to working with you in your new position.

Senator JEPSEN. Thank you, Mr. Chairman. I echo both statements and I thank the committee again for the time and assure all of you that I will do the best job that I can and will be quick to

respond to any requests that may come from you or any member of your committee.

The CHAIRMAN. Thank you very much.

Senator JEPSEN. Thank you, Mr. Chairman.

[Biographical sketch of nominee and response to written questions of Senator Proxmire follow:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: JEPSEN (LAST) ROGER (FIRST) W. (OTHER)

Position to which nominated: Board Member, National Credit Union Administration Date of nomination:

Date of birth: 23 (DAY) Dec (MONTH) 28 (YEAR) Place of birth: Cedar Falls, Iowa

Marital status: married Full name of spouse: Dee Ann

Name and ages of children: Jeffrey--36; Linda --29; Ann --32; Deborah --27; Craig --30; Coy --25

Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of Northern Iowa	1945-46	--	--
Arizona State University	1948-50	B.S.	1950
Arizona State University	1950-53	M.A.	1953

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

NUMEROUS honorary awards as U.S. Senator

Who's Who in American Colleges & Universities

Who's Who in America, etc.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Rotary, Chamber of Commerce, Heart Association, Association for Mentally Retarded, YMCA, Full Gospel Business Men, Life Underwriters Association, General Agents and Managers Association, Reserve Officers Association, National Rifle Association, Masons (Blue Lodge, Shrine, Jester), CREED (Christian Rescue Effort for the Emancipation of Dissidents)		

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

1. Veterans Advisor and Assistant Registrar, Arizona State University, Tempe, AZ, 1950-1953
2. Life Insurance Agent, American United Life Insurance Co., Cedar Falls, Iowa, 1953-56.
3. Manager, Connecticut General Life Ins. Co., Davenport, Iowa, 1957-73.
4. Executive Vice President, Agridustrial Electronics, Davenport, Iowa, 1973-75.
5. President, Healthy Eyes Program (HEP), Inc. Davenport, Iowa, 1976-78.
6. Served as U.S. Senator 1979 through 1984.

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Elected Scott County Board of Supervisors	1962-65
Elected State Senator, Iowa	1966-68
Elected Lt. Governor, Iowa	1968-70
Re-elected Lt. Governor, Iowa	1970-72
Elected U.S. Senator, Iowa	1978-84

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Op-Ed pieces on Economics published in NY Times and Wall Street Journal, 1981-83.

Political affiliations and activities: List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Iowa Executive Committee, Reagan for President, 1976.

Agriculture Advisor to Reagan for President Committee, 1980

Political contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

N/A

Qualifications: State fully your qualifications to serve in the position to which you have been named.
(attach sheet)

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes; none to be severed

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

N/A

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

STATEMENT OF QUALIFICATIONS

I believe that the sum total of my work experience, public service, and formal education provide adequate practical skills and administrative abilities needed to carry out the responsibilities of chairman of the National Credit Union Administration.

In the private sector I have served as a personal counselor on a university staff, taught marketing on a university level, and successfully developed an insurance agency specializing in money management, estate and tax planning.

In the public sector I have served in elected office at all levels of government: county supervisor, state senator, Lt. Governor, and U.S. Senator. I have served in both legislative and administrative branches of government. I have participated in the development of legislation and regulatory statute, and have actively participated in the interpretation and administration of same.

My interest and experience in finance and economics was highlighted by my six years of service on the Joint Economic Committee of Congress. Two of those six years I served as chairman.

Senator Jepsen's
Answers to Senator Proxmire's Questions

Q. 1. People who place their deposits in credit unions are ~~issued~~ INSURED up to $100,000 on their deposits at each credit union. Over that amount their deposits are not insured and depositors can lose their money if the credit union fails. In light of that, and to ensure the safety of depositors funds do you believe your agency should adopt rules prohibiting credit unions from investing their funds through money brokers. As you know many credit unions have lost money by seeking the higher returns offered by using such brokers?

A. 1. NCUA has on numerous occasions warned credit unions to exercise caution and prudence in this area. The key to solving problems caused by brokers, I believe, is closer supervision of all types of financial institutions, rather than a blanket rule outlawing all broker activities. As for credit unions, the agency presently is working on legislation to enable us to take enforcement action against dishonest and unscrupulous brokers. In addition, NCUA should have a continual education and information program communicated to credit unions on the danger and economic imprudence of investing any monies in uninsured brokered accounts.

Q. 2. I understand that under your predecessor the operations of the National Credit Union Administration became less centralized as regional directors were given new powers and responsibilities. Credit unions, I understand, like this development as it has streamlined and expedited your agency's decision making process.

Is my understanding of this matter correct? If so do you plan to continue with the regional approach or have problems arisen that make you believe operations should be centralized again?

A. 2. NCUA did undergo substantial decentralization over the past four years. Although I do believe major policies of the agency should be consistent and uniform, it does appear to me that decentralization has generally operated in the best interest of both the agency and credit unions.

Q. 3. The National Credit Union Administration recently carried out a program to recapitalize the credit union insurance fund. Do you think the FDIC and the FHLBB should recapitalize their insurance funds for banks and thrifts respectively using a formula similar to that used by credit unions. If not, why not.

A. 3. NCUA's Capitalization Program has been very successful. However, I don't believe it would be appropriate for me to comment on its potential applicability to banks and S&L's. Credit unions have a long tradition of cooperation and self help which made the capitalization plan uniquely suited for strengthening their Share Insurance Fund.

Q. 4. As you know Congress does not appropriate the operating fund reserves of the National Credit Union Administration. Rather your agency operates on funds obtained from assessments on credit unions under its supervision. Under your predecessor, Mr. Callahan, these assessments were reduced and as a consequence, your agency's reserves are now down. I understand there is some discussion of raising assessment fees by 10 percent in order to remedy the situation. Are you aware of this problem and if so what steps do you plan on taking to resolve it? Will you give credit unions under your agency's supervision a chance to comment on any new proposals? Finally will the influx of new credit unions under your agency's jurisdiction referred to in my previous question compound this operating expense problem for your agency?

A. 4. It is true that the agency's reserves are down and an operating fee increase in the 10% range for next year will be necessary in order to begin the process of replenishing the reserves, hiring and training additional examiners, and dealing effectively with the large number of insurance conversions. NCUA has been consulting with credit unions and will continue to seek their input on the operating fee issue.

The CHAIRMAN. Next, I'd like to invite to the witness table Mr. Joseph Grundfest, nominated by the President to be a member of the Securities and Exchange Commission.

Senator D'Amato is on his way over and while he is coming maybe I could have you stand and be sworn.

[Whereupon, the witness was duly sworn.]

The CHAIRMAN. Senator D'Amato.

OPENING STATEMENT OF SENATOR D'AMATO

Senator D'AMATO. Thank you, Mr. Chairman.

I would like to welcome this morning's witnesses to the committee. Appearing before the committee today are: one of our former colleagues, Roger Jepsen, the nominee to the Board of the National Credit Union Administration; Joe Grundfest, the nominee as Commissioner to the Securities and Exchange Commission; and a valued member of the Banking Committee staff, Paul Freedenberg, the nominee to the position of Assistant Secretary of Commerce for Trade Administraiton.

I have examined and been impressed with the academic and professional credentials of all three of today's witnesses.

Mr. Chairman, I am pleased to introduce Joseph Grundfest, the nominee to the position of Commissioner of the Securities and Exchange Commission.

Mr. Grundfest was born and raised in New York City just a few blocks west of the old Polo Grounds and although he resides in the District, his family remains in New York and our State is proud to consider him as one of our own.

Mr. Grundfest had a distinguished academic career while attending Yale and Stanford Universities and the London School of Economics.

Joe has extensive professional training and experience in the private and public sector, both as an attorney and as an economist. He is currently legal counsel and senior economist for legal and regulatory matters at the Council of Economic Advisers. In this capacity, I have been impressed with his ability to explain the impact that certain amendments to the Federal securities law would have on the securities industry and on the economy in general.

The Commission will undoubtedly benefit from the expertise that Joe will provide. He's a member of the bar of the District of Columbia and the State of California. He's also been an economist at the Brookings Institute and at the Rand Corp.

As members of this committee are aware, the securities markets are becoming increasingly complex. New instruments are being introduced at an unprecedented pace and new trading strategies are continually being developed and refined. Joe's ability to offer the insight of both an attorney and economist promises to bring a fresh perspective to the Commission.

I look forward to the contributions he will make over the coming 5 years and I believe we are truly fortunate to have an individual of Joe's caliber to serve as a Commissioner of the SEC.

Let me add, Mr. Chairman, I believe that he has the intellectual capabilities and has demonstrated the acumen to be one of our truly outstanding Commissioners during a rather turbulent period

of time in the securities industry. I don't think that I've seen the President send a more distinguished nominee before this committee and I enthusiastically introduce him to the committee and hope that he can be approved speedily.

Mr. Chairman, Paul Freedenberg's departure from the Banking Committee is a loss for this committee but a great gain to the Commerce Department. During his tenure with the committee, Paul has demonstrated a keen intellect that should serve him well in his new position. He goes to the Commerce Department at a time when the issues concerning America's foreign trade policy are of great concern to the Congress and the American people.

I believe that we are truly fortunate to have individuals of this caliber willing to serve as public officials. I have enjoyed working with you in the past and am looking forward to working with you in your new position.

Thank you, Mr. Chairman.

The CHAIRMAN. Do you have any comments, Senator Proxmire?

Senator PROXMIRE. No comments.

The CHAIRMAN. Mr. Grundfest, please proceed.

STATEMENT OF JOSEPH ALEXANDER GRUNDFEST, NOMINATED TO BE A COMMISSIONER, SECURITIES AND EXCHANGE COMMISSION

Mr. GRUNDFEST. Mr. Chairman and members of the committee, it's a privilege to appear before you today as a nominee for appointment to the Securities and Exchange Commission.

Over its 50-year history, the Securities and Exchange Commission has earned a well-deserved reputation as perhaps the finest independent regulatory agency in the Federal Government. This reputation has been built by a dedicated and highly professional staff enforcing a carefully crafted set of statutes and regulations.

It is an extraordinary responsibility and challenge to serve as a member of the Commission. It is a task that I approach with deep respect for the Commission's history and for its importance to the future economic growth of our Nation.

I would be glad to answer any questions that members of this committee might have. Thank you very much.

The CHAIRMAN. Thank you, sir.

I understand that to avoid even the appearance of conflict of interest you will recuse yourself from certain matters where your former employer, Wilmer, Cutler & Pickering, is representing a client. Is that correct?

Mr. GRUNDFEST. That's correct, Senator.

The CHAIRMAN. It is also my understanding that you and your wife will also dispose of your interest in securities and mutual funds if confirmed. Is that correct?

Mr. GRUNDFEST. That is correct.

The CHAIRMAN. And do you agree to appear before this committee and other congressional committees if requested?

Mr. GRUNDFEST. I will.

The CHAIRMAN. One of the issues that this committee has addressed is the regulation of the Government securities markets. The SEC stated its position on this subject earlier this summer.

Without getting into specifics of the SEC's or other legislative proposals, do you believe that Federal regulation of these markets is necessary?

SEC FAIRLY ACTIVE IN GOVERNMENT SECURITIES MARKET

Mr. GRUNDFEST. Mr. Chairman, first, I'd like to point out that the Securities and Exchange Commission has already been fairly active in areas related to the Government securities market. Staff members of the SEC have written to the Investment Company Institute on three occasions suggesting that investment companies perfect their security interest in Government securities involved in repos and reverse repos. The Securities and Exchange Commission is, in addition, examining amendments to regulation S–X that would require further disclosure of repos and reverse repos positions by publicly traded companies.

With regard to the question of whether there should be regulation in this area, I think if we can craft regulation that improves market performance and generates benefits that exceed regulatory costs, then that type of regulation should seriously be considered by the Senate and by the involved regulatory agencies.

The CHAIRMAN. If regulation is necessary, what role with regard to enforcement should the SEC play?

Mr. GRUNDFEST. Whatever responsibility is delegated to the Commission by the Senate, by the House, and by the President, should be very actively and aggressively enforced by the Commission.

RECENT PROLIFERATION OF FUTURES CONTRACTS

The CHAIRMAN. We've seen recently a proliferation of futures contracts. In your view, what do you think is causing this trend and is it healthy, in your opinion?

Mr. GRUNDFEST. The creation of a new instrument usually occurs in response to some sort of demand and some sort of need in the marketplace. In the situation of futures contracts, or in the situation of the formulation of a new options contract, investors often perceive that there's a certain amount of risk associated with holding the underlying commodity or security instrument.

For example, you may hold a bond that has interest rate sensitivity and you may want to lay off the risks associated with that interest rate sensitivity. You may be a farmer with a crop. You may not want to bear the risk of whether the price of the crop will increase or decrease between the date you put in the planting and the date the crop finally comes to market. In those situations the presence of instruments such as futures or options provide a service akin to that of insurance that people can go out and buy on their homes and the like. And, from that perspective, yes, I think these contracts improve the performance of the marketplace: They allow individuals to insure against risks, and they improve the liquidity of the marketplace.

The CHAIRMAN. Senator Proxmire.

Senator PROXMIRE. Mr. Grundfest, what do you understand are the underlying purposes of our Federal securities laws?

Mr. GRUNDFEST. The basic principles underlying the Federal securities laws are to ensure adequate disclosure of information to in-

vestors and to promote the efficiency and the integrity of the marketplace.

Senator PROXMIRE. In your confirmation statement you indicate that you're the author in the Economic Report of the President of the chapter on takeovers.

Mr. GRUNDFEST. The contest for corporate control, yes.

Senator PROXMIRE. The market for corporate control. I gather that on balance you believe that hostile takeovers serve a beneficial economic purpose.

Mr. GRUNDFEST. I believe the precise attribution would be that takeovers in general do serve a beneficial purpose, yes.

Senator PROXMIRE. I'm talking about hostile takeovers.

Mr. GRUNDFEST. There is no evidence that I've seen that would systematically be able to distinguish the consequences of hostile takeovers from friendly takeovers.

Senator PROXMIRE. What are some of the benefits we've seen from the recent Unocal, Phillips, and CBS takeovers?

Mr. GRUNDFEST. Well, aside from looking at individual situations, I think it's very important that regulatory agencies in general and the Senate recognize that we're making policy for the Nation as a whole. Policy should be made on the basis of aggregate information, a systematic view of the available evidence. We shouldn't let individual situations or individual anecdotal situations control the outcome of the policymaking process.

I believe that, if one looks at the available evidence in the aggregate and over time, one will find at least six benefits that tend to result from takeover activity. These six benefits are: First, that takeovers can allocate resources to higher valued uses; second, they can promote economies of scale and scope; third, they can increase the return from investments in stocks of publicly traded companies; fourth, they can reinforce market incentives that require management to compete effectively; fifth, they can free up capital for new investment opportunities; and, sixth, they can equilibrate capital structures with prevailing capital market conditions.

Senator PROXMIRE. What was your sixth again?

Mr. GRUNDFEST. Equilibrate capital structures with prevailing capital market conditions.

Now not every takeover and not every merger turns out to be successful. In order to determine whether these effects occur, you need to look at all transactions in the aggregate and you need to consider them over time. No doubt, there will be individual cases where one can look back in hindsight and say, you know, that wasn't a good deal, that was a takeover that we never should have done. But it's a little bit like advertising. I hear advertising executives say that they know that 50 percent of their advertising budget is wasted. They're just never sure which 50 percent. The same question is, I think, present in the situation of assessing takeovers.

Senator PROXMIRE. Well, now, Mr. Grundfest, that's a response that really doesn't satisfy me at all. I asked you a question about Unocal, Phillips, and CBS and you gave me a very generalized response that applies to none of them.

Will you tell me which of these six categories of advantages flow from the Unocal attempted takeover?

Mr. GRUNDFEST. Senator, if proper, I would like to avoid responding to questions regarding Unocal and CBS because they were former clients of mine at the law firm of Wilmer, Cutler & Pickering.

Senator PROXMIRE. Well, the takeover is over now. It's not something that's pending. It's not a court case.

Mr. GRUNDFEST. I understand that the takeover attempts in those situations are currently ceased and, to the best of my knowledge, there's nothing pending. If I may focus on the question of Phillips, I'd be glad to discuss that one in particular to the best of my knowledge.

My understanding is that the main outcome of the *Phillips* case is that there was a fundamental restructuring of the debt of the corporation. It's also interesting to observe that many of the takeovers that are going on——

ENORMOUS INCREASE OF DEBT FROM TAKEOVERS

Senator PROXMIRE. On that debt situation, is that favorable? It seems to this Senator that there's no question that the takeovers have resulted in an enormous increase in debt by the targets, both whether they're successful or unsuccessful, and the result is that in many cases firms have transferred equity capital into debt capital. They're more fragile in the event of a recession. That doesn't seen to me to be an advantage for the economy or for the particular firm, the employees of the firm, or the community where the firm is located.

Mr. GRUNDFEST. Well, let me try to combine the response to both questions to look at the situation in the context of Phillips and also to consider the consequences of increased leverage that results in certain situations as a consequence of takeover contests or defensive strategies resulting from takeover contests.

In the case of Phillips, in order to understand what's happened there, I believe it's important to understand what's happening in the petroleum industry in general, not just in the United States but also worldwide. We have a situation where the price of the underlying commodity is declining. In a context where the price of an underlying commodity is declining, it makes less sense to invest more money in attempting to search out and produce more of the commodity whose value is on the decline.

To take a simple analogy from the case of the real estate market, if the price of condominiums is decreasing one doesn't want to go and build a new condominium.

Many oil companies are in situations where, despite the fact that the price of oil is declining, they continue to expend massive quantities of money in search of more oil. A question is often raised as to whether it is a rational expenditure of the company's resources.

In a situation where a company enters into debt covenants and debt agreements that result in cash payments to stockholders and an increased corporate debt burden where the alternative use of those funds would be for exploration to find oil whose price is currently declining, we have a situation where the company is essentially dedicating its cash-flow to its stockholders, thereby increasing value to the stockholders by taking money that might other-

wise have been spent in exploration for oil whose price is declining, and allowing the investors to turn elsewhere in the economy and invest that money in other projects—new computer companies, for example, or whatever else appears to have a more attractive rate of return than might be available in the petroleum market at that time.

Senator PROXMIRE. Could you name a couple companies for me that you believe have benefited from the threat of being acquired in a hostile takeover?

Mr. GRUNDFEST. Senator, I don't think that I could go through a list and pick out companies that have individually done well or companies that have individually done poorly as a result of takeovers.

Senator PROXMIRE. Now in the chapter on takeovers you seem to philosophically support the concept of federalism and also letting State law and State court decisions to govern in large part what is fair and what is not fair to play in the takeover game.

On the other hand, recently the Securities and Exchange Commission joined in a suit challenging a Minnesota corporate anti-takeover law as unconstitutional. And in a separate action is promulgating a rule to overturn a Delaware Supreme Court ruling in the *Unocal* decision.

If confirmed, how will you mesh your seeming States' rights approach in support for the economic value of federalism with filing Commission suits to overturn State court decisions and State laws?

Mr. GRUNDFEST. Well, Senator, first of all, I'd like to observe that in many situations the States have done quite well in terms of regulating takeover tactics and defensive schemes. For example, in the State of California, there's a case by the name of *Hechman* v. *Ahmanson* which grew out of a greenmail incident related to an attempted takeover of Disney. In that case the court imposed a constructive trust on the proceeds of the greenmail payment. The court found that there was a breach of fiduciary duty by the board of directors. The court also found that the greenmailer had actively participated in and profited from the breach. Therefore, it imposed the constructive trust.

The situation regarding golden parachutes is also under review by the California courts in connection with the Signal takeover. (*Weinberger* v. *Shumway*, No. 547586, Super. Ct., San Diego.) There recently have also been State golden parachute decisions in *Minstar* v. *AMF* (*Minstar Acquiring Co.* v. *AMF Inc.*, No. 85, Civ. 3800 (S.D.N.Y., June 7, 1985)) and *Koenigs* v. *Schlitz* (*Koenigs* v. *Joseph Schlitz Brewing Co.*, 123 Wis. 2d, 368 N.W. 2d 690 (1985)).

With regard to the need to integrate respect for States rights with the need to avoid balkanization of the market and respect the appropriate scope of the securities laws, I think the courts have to be guided by the Supreme Court's decision in the *MITE* case (*Edgar* v. *MITE Corp.*, 457 U.S. 624 (1982)) and I think the Securities and Exchange Commission also has to abide by the principles laid down in that decision.

Senator PROXMIRE. Let me ask you to just give me the answer, No. 1 or No. 2. Which is more important to you philosophically, No. 1, encouraging corporate takeovers or, No. 2, supporting the concept of States rights?

Mr. GRUNDFEST. Is there a No. 3 or No. 4 or No. 5 on that list, Mr. Senator? [Laughter.]

Senator PROXMIRE. I asked you No. 1 or No. 2. I was trying to make it easy for you.

Mr. GRUNDFEST. No. 3, sir, I think.

Senator PROXMIRE. What's No. 3?

Mr. GRUNDFEST. Well, No. 3 is——

Senator PROXMIRE. Either of the above? [Laughter.]

SHAREHOLDERS SHOULD DECIDE THESE MATTERS

Mr. GRUNDFEST. Neither of the above is correct. I think the most important principle that we should try to follow both at the Federal level and at the State level is that, wherever possible, we should let shareholders decide these matters for themselves. The shareholders are the owners of the corporation and they elect the management. They have the capability—they're intelligent enough, they're sophisticated enough—to determine the terms and condition under which they want to entertain takeover attempts and the types of defenses that they want to permit. We must remember that a corporation is essentially a complex web of individual contracts. People who are closely involved have the information and the incentives to manage their affairs properly. And, to the extent that we can regulate with an eye toward keeping responsibility with those people that are most immediately involved, I think the entire process will be improved.

Senator PROXMIRE. My time is up.

The CHAIRMAN. Senator Gorton.

Senator GORTON. I have no questions, Mr. Chairman.

The CHAIRMAN. Senator D'Amato.

Senator D'AMATO. Mr. Chairman, I have no questions.

The CHAIRMAN. Senator Cranston.

Senator CRANSTON. I have no questions.

Senator PROXMIRE. I have some questions for the record, Mr. Chairman.

The CHAIRMAN. Mr. Grundfest, I have no additional questions. I know of no objections to your nomination and we will try to expedite your approval process.

Mr. GRUNDFEST. Thank you very much, Mr. Chairman.

[Biographical sketch of nominee and response to written questions of Senator Proxmire follow:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Grundfest (LAST) Joseph (FIRST) Alexander (OTHER)

Position to which nominated: Commissioner, Securities and Exchange Commission

Date of nomination: Sept. 17, 1985

Date of birth: 8 (DAY) Sept. (MONTH) 1951 (YEAR)

Place of birth: New York, New York

Marital status: Married

Full name of spouse: Carol Chia-Ming Grundfest

Name and ages of children: None

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Stanford Law School	9/74-6/78	J.D.	1978
Stanford Econ. Dept.	9/74-6/78	(ABD-Ph.D.)*	(1978)*
Yale University	9/69-1/73	B.A.	1973
London School of Economics	9/71-8/72	(M.Sc.)**	(1972)**

* I have completed all requirements for the Ph.D. in economics other than submission of a dissertation.

** During a junior year abroad I completed the Masters program in econometrics and mathematical economics. London University regulations at that time precluded the award of a Master's Degree to a student who had not received a Bachelor's Degree. Accordingly, no degree was granted.

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Brookings Institution Dissertation Fellowship (1978-1979).

Stanford University Fellowships (1974-1978).

California State Fellowship for the Study of Law and Economics (1974-1978).

Population Council Fellowship (1973) (declined).

National Science Foundation Fellowship for Economics (1973) (declined).

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
None.		

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

See Attachment A.

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

1. Counsel and Senior Economist for Legal and Regulatory Matters, Council of Economic Advisers, 9/84-present.
2. Department of State, Law Clerk, Summer 1976.
3. Federal Communications Commission, Legal and Economic Assistant to Commissioner Glen O. Robinson, Summer 1975.

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

See Attachment B.

Political affiliations and activities: List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

I am a registered Democrat.

Political contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

None.

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

See Attachment C.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

If confirmed, I will sever all connections with the Council of Economic Advisers.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

I have no such plans.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

See Attachment D.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

See Attachment D.

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None, other than legislative matters arising in the course of performance of my duties at the Council of Economic Advisers.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

See Attachment D.

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None, other than FBI background checks required in connection with my pending nomination, and in conjunction with my previous employment by the Council of Economic Advisers, the State Department, and the Rand Corporation.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None.

Attachment A: Employment

Council of Economic Advisers (1984-Present) - Counsel and Senior Economist for Legal and Regulatory Matters.

Wilmer, Cutler & Pickering (1979-1984) - Associate. Practice spanned general litigation and corporate matters. Litigation matters included successful representation of plaintiffs in a securities fraud-accountant malpractice action, representation of a major multinational firm in foreign antitrust proceedings, and successful representation of a defendant in a takeover-related antitrust action. Corporate matters included formation of two high-technology start-up firms, and negotiation of a major computer acquisition contract.

Peat, Marwick & Mitchell (1978-1979) - Consultant. Prepared economic analyses of the market for title insurance and real estate brokerage services for a HUD report to Congress.

Rand Corporation (1973-1979) - Economist and Consultant. Conducted research relating to the broadcast industry, telecommunications policy, housing policy, and regulatory institutions.

Aspen Institute for Humanistic Studies (1979) - Organized seminars and prepared briefing books on legal, economic, and technological aspects of viewdata and teletext services.

Gibson, Dunn & Crutcher (Summer - 1977) - Law Clerk. Prepared memoranda and conducted research regarding miscellaneous civil litigation and business organization matters.

U.S. Department of State (Summer -1976) - Law Clerk. Conducted legal and economic analyses of potential U.S. responses to expropriations by foreign governments.

Federal Communications Commission (Summer - 1975) - Assistant to Commissioner Glen O. Robinson. Conducted legal and economic analyses of telecommunications ratemaking cases and broadcast rulemakings.

University of Southern California (1974) - Lecturer. Developed and taught a course on applied economic analysis and public policy.

Joseph A. Grundfest

Attachment B

PUBLICATIONS AND RESEARCH REPORTS

The Market for Corporate Control, Chapter 6 in the Economic Report of the President (February 1985).

Economic Incentives for Ethical Behavior in Markets for Professional Services, Ph.D. Thesis, Department of Economics, Stanford University (in progress).

The Justice Department's New Merger Guidelines, Wilmer, Cutler & Pickering (Memorandum for All Clients) (July 1982).

The Federal Trade Commission's Statement Concerning Horizontal Mergers, Wilmer, Cutler & Pickering (Memorandum for All Clients) (July 1982).

Antitrust Analysis, Market Concentration and the Herfindahl Index, Wilmer, Cutler & Pickering (Memorandum for House Counsel) (October 1980).

Teletext and Viewdata: Policy, Economics and Technology, Aspen Institute, Program on Communications and Society (November 1979).

A Briefing Book for the Aspen Workshop on Teletext and Viewdata, Aspen Institute, Program on Communications and Society (August 1979).

Kickbacks, Specialization, Price Fixing, and Efficiency in Residential Real Estate Markets, 29 Stanford L. Rev. 931 (1977) (with Bruce Owen).

A Most Expensive Real Estate Custom, Los Angeles Times, Part IV, p. 5 (December 4, 1977) (with Bruce Owen).

Participation in FCC Licensing, 27 J. Communications 85 (1977).

Licensing of Real Estate Brokers as Underwritten Title Insurance Agents, A Report to the State of California, Department of Economics, Stanford University, Studies in Industrial Economics, No. 64 (1976) (with Bruce Owen).

Citizen Participation in Broadcast Licensing Before the FCC, the Rand Corporation, R-1896-MF (March 1976).

Projecting the Growth of Television Broadcasting: Implications for Spectrum Use, The Rand Corporation, R-1841-FCC (September 1975) (with R.E. Park).

Joseph A. Grundfest

Attachment C: Qualifications

The issues confronting the Securities and Exchange Commission span a broad range of disciplines. Commissioners are regularly called upon to address legal questions, evaluate economic theories, and assess the reliability of statistical evidence. The answers to problems posed before the Commission often do not lie within the vision of a single discipline. An economist's solution may, for example, be impractical because it is inconsistent with relevant statutes and legal precedent. An attorney's solution that simply extends precedent can overlook fundamental changes in the market environment and can lead to regulations that are both unnecessary and unwise. The Commission must address increasingly complex problems from a perspective that synthesizes a range of intellectual disciplines. Otherwise, the danger is that the Commission will become incapable of properly regulating a rapidly evolving and increasingly complex securities market.

My experience and education as an attorney, policy analyst, and economist provide me with a breadth of understanding that will, I hope, allow me to contribute to the SEC's well-deserved reputation as one of the Nation's finest regulatory agencies. As an attorney, I have litigated securities fraud actions, negotiated venture capital financings, represented multinational corporations in foreign antitrust proceedings, prepared Supreme Court briefs, and participated as counsel in numerous administrative proceedings. As an economist, my research and publications have dealt with the economic rationales for the evolution of ethical conduct in markets for professional services, contests for corporate control, the regulation of telecommunications markets, and antitrust policy. In addition, I am well versed in capital market research and corporate finance theory relevant to the Commission's regulatory mission. My tenure as Counsel and Senior Economist for Legal and Regulatory Matters at the President's Council of Economic Advisers has also provided me with valuable experience regarding the workings of the Federal Government and the practical realities of the regulatory process.

Joseph A. Grundfest

ATTACHMENT D: RESPONSE TO ITEMS 2 and 5, "POTENTIAL CONFLICTS OF INTEREST"

Investments. My wife and I will divest ourselves of all securities holdings, except for IRA accounts invested in money market funds or bank-issued certificates of deposit. In addition, all funds currently held in my Keogh account, initially established as a fringe benefit of my previous employment by Wilmer, Cutler & Pickering, will promptly be transferred to a retiremment account that has no relationship with the firm.

Previous Employment. From November 1979 through August 1984 I was an associate at the law firm of Wilmer, Cutler & Pickering in Washington, D.C. After terminating my employment with Wilmer, Cutler & Pickering, the firm and I continued to represent my wife's parents who were plaintiffs in a securities fraud action in the Northern District of California. That representation was in accordance with conditions established by White House Counsel and was approved in writing by Ethics Council at the Office of Personnel Management. That case has been successfully prosecuted and an Order of Dismissal pending execution of settlement documents has been entered by the Court.

In matters before the Commission concerning a request on behalf of a specific party for an exemption from a rule or statute of general appplicability, or matters involving the institution of enforcement proceedings:

(1) I intend to disqualify and recuse myself where I had any connection with or gained significant knowledge of the matter while I was employed by Wilmer, Cutler & Pickering: and

(2) I intend to disqualify and recuse myself for a period of two years where Wilmer, Cutler & Pickering represents any party involved in such matters, except where the representation is unrelated to the matter pending before the Commission. Thereafter, I intend to disqualify myself where it appears desirable for me to do so to avoid an actual conflict of interest or the possible appearance of impropriety.

In addition, I intend to disqualify and recuse myself, on a case-by-case basis, with respect to any matter, where, in order to avoid the possible appearance of impropriety, it appears desirable to me to disqualify myself, despite the lack of any actual conflict of interest. In general, it is not my intention to recuse myself from general policy considerations or rulemaking proceedings.

MR. GRUNDFEST'S RESPONSES TO
WRITTEN QUESTIONS SUBMITTED BY
SENATOR PROXMIRE

Markets

Question 1: Do you think the exchanges and exchange specialists should be given a greater opportunity to compete with over-the-counter dealers in actively traded over-the-counter stocks and taking the flip side of the same question, do you believe in giving the over-the-counter greater access to competition with the exchanges?

Response to Question 1: The Commission should adopt policies that promote competition and protect the public interest. Increased competition between exchanges and the over-the-counter market can, if properly implemented, reduce transactions costs, promote the efficient allocation of capital among issuers, and facilitate the formation of new equity capital. Competition among exchanges and dealers can thereby benefit issuers, investors, and the economy as a whole. Accordingly, I would support responsible efforts to expand competition among exchanges and dealers.

Market Structure

Earlier this week it was reported that the Montreal Stock Exchange plans to begin listing stocks of large European and other overseas companies by the end of the year with the aim of attracting U.S. investors to the Canadian Exchange. One advantage for the foreign company clearly would be that it won't have to file a prospectus with the SEC or follow SEC regulations.

In another unrelated matter, last week when Hurricane Gloria threatened New York and all the exchanges closed in New York, Jefferies Group, Inc., the Los Angeles-based brokerage firm, traded more than 12 million shares and mopped-up big profits in off-board trading.

Question 2: What do these two separate events tell you about the future direction of our trading systems?

Response to Question 2: The traditional pattern of securities trading, in which investors purchase U.S. securities on U.S. exchanges from 10 a.m. to 4 p.m. New York time, is rapidly changing. For example, it is becoming easier for U.S. investors to purchase instruments that are issued by foreign firms and traded on foreign exchanges. Some investors trade abroad directly. Other investors purchase mutual funds composed solely of foreign instruments, or participate in foreign markets through other intermediaries. Similarly, foreign investors have increased their participation in U.S. securities markets, and have thereby provided valuable equity and debt capital for our economy.

In addition to shedding its traditional geographic bounds, trading is also shedding its temporal restrictions. Valuable information that influences market valuations emerges on a twenty-four hour a day, seven day a week basis. The demand for trading services are therefore not necessarily limited to a

"nine-to-five," five day a week schedule. Modern telecommunications technology also allows traders to "follow the sun" and move their transactions around the world to whichever market happens to be open at the time demand for transaction services emerges. Indeed, the New York Stock Exchange recently advanced its opening to 9:30 a.m. in order to increase its overlap with the hours during which European investors are most interested in trading equity securities.

These developments suggest that securities market competition is becoming more intense and that U.S. trading systems must evolve in response to new challenges. Inflexible adherence to traditional business practices that may have made sense in earlier years, when telecommunications technology was less advanced and markets were relatively insulated from international capital flows, can cause U.S. markets to atrophy and lose their competitive edge. If U.S. trading systems fail to provide efficient transactions capabilities -- regardless of the location of the transactors, domiciles of the issuers, time of day, or state of the weather -- investors will direct their business to markets that can efficiently provide the necessary transactions facilities.

Confirmation Questionnaire

In your confirmation questionnaire you refer to the "increasingly complex problems" facing the Commission and the need for the Commission to "properly (regulate) a rapidly evolving and increasingly complex securities market."

Question 3: What are some of the complex issues you see facing the Commission?

Response to Question 3: Among the many complex issues facing the Commission are: (1) the disclosure and enforcement problems raised by increased internationalization of securities markets; (2) trading and competition problems related to the emergence of new instruments and new trading strategies; (3) the controversy raised by takeover attempts involving publicly traded corporations; and (4) introduction of improved means for efficient dissemination of relevant information to investors. A major step the Commission is taking to address the information dissemination issue involves introduction of its new Electronic Data Gathering Analysis and Retrieval system ("EDGAR"). That system is designed to facilitate compliance with disclosure requirements and enhance the Commission's and the market's ability to examine filings by publicly traded firms.

Question 4: How would you define the regulatory responsibility of the Commission?

Response to Question 4: The Commission's regulatory responsibility is to exercise its judgment responsibly in the public interest in accordance with its statutory authority as defined primarily by the Securities Act of 1933 (15 U.S.C. §§77a, et seq.); the Securities Exchange Act of 1934 (15 U.S.C. §§78a,

et seq.); the Investment Company Act of 1940 (15 U.S.C. §§80a-1, et seq.); the Investment Advisers Act of 1940 (15 U.S.C. §§80b-1, et seq.); the Trust Indenture Act of 1939 (15 U.S.C. §§77aaa, et seq.); the Public Utility Holding Company Act of 1935 (15 U.S.C. §§79a, et seq.); and the Securities Investor Protection Act of 1970 (15 U.S.C. §§78aaa, et seq.); and as interpreted in numerous court rulings.

Question 5: What current SEC regulations, if any, do you believe "are both unnecessary and unwise"?

Response to Question 5: In general, I would consider a regulation unnecessary and unwise when the regulation generates costs that exceed its benefits. Making such a determination requires a careful analysis of the consequences that particular rules have on market performance. To date, however, I have not engaged in the analysis necessary to conclude that any existing SEC regulations are either unnecessary or unwise.

Court Cases

The Securities and Exchange Commission has recently suffered a number of losses in legal cases it has brought in the courts. These include losses in the Supreme Court.

Question 6: As a lawyer and Commissioner what would you plan to do to reverse this trend?

Response to Question 6: As an initial matter, it is valuable to note that in fiscal year 1985 preliminary data indicate that the Commission prevailed in 37 of 41 cases decided by the Supreme Court and appellate courts. (Six cases were dismissed as moot, resolved on a split decision, or otherwise not resolved.) In fiscal year 1984, the Commission won 42 of 49 decided cases, with 7 cases otherwise resolved. In fiscal year 1983, the Commission prevailed in 38 of 44 cases, with 3 cases otherwise resolved. If anything, the trend suggests that the Commission has recently improved its appellate "batting average" from a success percentage of 86.4% in 1983 and 85.7% in 1984 to a level of 90.2% in 1985. Accordingly, rather than seek to reverse the recent trend, I would seek to reinforce strategies that have improved the probability of success before the courts. In this regard, I would examine more carefully the theories underlying the legal positions adopted by the Commission and strive to craft positions more clearly supported by statutory language, legislative history, and existing precedent. Where appropriate, I would also encourage the Commission to proceed by rulemaking rather than resort to courts to resolve matters of first impression that are within the Commission's jurisdiction and expertise.

Accountants

Throughout the past year the House Commerce Committee, Subcommittee on Oversight and Investigations has been holding hearings regarding the conduct of the accounting profession.

Question 7: What do you see as the Commission's oversight responsibilities and jurisdiction over the accounting profession and what steps if any do you think the Commission should be taking to better oversee accountants?

Response to Question 7: Federal securities laws and Commission regulations promulgated thereunder prescribe the form and content of financial disclosures by publicly traded firms, as well as the qualifications of accountants, including their independence, and accountants' reports on financial statements. The Commission issues interpretive releases and proposes rules to address significant accounting issues. In addition, the Commission's staff periodically issues Staff Accounting Bulletins to inform the financial community of its views on accounting and disclosure issues. The Commission also relies on the Financial Accounting Standards Board to define and improve the set of Generally Accepted Accounting Principles relied upon by accountants who prepare disclosure documents. The Commission monitors the activities of the FASB, as well as the activities of other private sector standard setting organizations, such as the AICPA Accounting Standards Board, to assure that material accounting issues are addressed in a responsible manner. The AICPA has also established a peer review process to assess the performance of member firms that voluntarily elect to participate in the review process. The Commission conducts oversight examinations of the peer review process on an annual basis.

(For a more detailed description of the extent of Commission oversight of the accounting profession see Statement of John S.R. Shad, Chairman of the Securities and Exchange Commission, Before the House Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, March 6, 1985.)

It appears that the Commission exercises substantial oversight authority over the accounting profession. This oversight authority is backed up by SEC enforcement and disciplinary proceedings against accountants who have violated SEC regulations or statutes. In addition, substantial private litigation has been instituted against accountants who have allegedly defrauded investors in publicly traded firms.

I recognize that substantial controversy exists over the adequacy of audited financial statements and over the incidence of "audit failures." In a relatively small number of instances these audit failures can be traced to the dishonesty of accountants. In these cases, the Commission has properly taken an aggressive enforcement position designed to deter such irresponsible conduct. In other cases, substantial and complex issues are raised concerning the adequacy of Generally Accepted Accounting Principles. As a Commissioner, I would examine industry practices to determine whether the procedures followed by accountants can be improved by making them reflect more closely the underlying market value of firms and their assets, and by improving disclosure of information that investors are likely to consider material to their investment decisions.

Corporate Finance

In the past we have heard that turnover in the division of corporation finance has been high; entrants are inadequately trained for their responsibiities; and documents are not thoroughly reviewed as a result of too few staff reviewing too many documents.

Question 8: If you found that this in fact was the case how would you address the problem?

Response to Question 8: The Commission's new Electronic Data Gathering Analysis and Retrieval ("EDGAR") system is currently scheduled to become operational in 1986. By 1988, the vast majority of filings reviewed by the Division of Corporation Finance are scheduled to be electronically filed. The introduction of EDGAR promises to change radically the internal operations of the Division of Corporation Finance. If the EDGAR system operates as planned, tasks that require time-consuming financial analyses will be automated and performed more rapidly and accurately. In addition, a greater number of documents will receive meaningful computer-assisted review. The process of reviewing filings will also be expedited and made more intellectually challenging for the staffers in the Division. As a consequence of these changes in the work environment, the mix of skills necessary for a staff member to operate effectively in the Division of Corporation Finance is

likely to be different than the set of skills necessary under current operating practices. Accordingly, if I found that such staffing and review problems exist, I would carefully search for resolutions likely to be effective in conjunction with the introduction of the new EDGAR system and avoid resolutions likely to be effective primarily under current procedures.

I should emphasize, however, that to the limited extent that I have been able to address this issue, it appears that substantial progress has been made with regard to the Division's performance. Turnover has declined from 46% in FY 1981 to 22% for FY 1985. Of the 50 accountants in the Division, close to all are CPAs, and the majority of the Division's 77 financial analysts hold masters degrees in finance, business administration, or economics. The Division has also substantially increased staff years devoted to training, and its increased use of automated data processing equipment has improved the Division's ability to focus its energies on filings that will benefit most from Commission review. As a Commissioner I would look for further improvements from all Divisions, not just Corporation Finance.

Directors' Liability

Earlier this month, on September 11th the Commission held a Roundtable meeting, and one recurring theme involved director liability and the difficulty corporate America is beginning to

have attracting first-class directors who are willing to serve on their boards. As one participant put it:

> "If you are a CEO you are out trying to recruit corporate directors it is one hell of a tough job. They say gee, that is terrific, I get $20,000 a year and I get unlimited liability. What is your next offer? It isn't the way it used to be where you lift the plate and there is a $10 gold piece and a half an hour later you went home. You go out of a board room now and there are eight process servers. It is not a very nice way to make a living."

Question 9: How do you deal with this problem and the related one of accountants' liability? How serious a problem is it?

Response to Question 9: The insurance problems faced by directors, officers, and accountants are hardly unique. Medical malpractice coverage has, for years, been a subject of heated controversy. Insurance coverage for toxic torts is all but impossible to obtain. Sharp premium increases for municipalities and product liability coverage have caused many local governments and manufacturers to "go naked" and operate without insurance protection. The seriousness of the D&O and accountant insurance problem is difficult to assess because of the rapid pace at

which the market is evolving in response to new information about D&O and accountant risks. See, e.g., Ipsen, The Crisis In Directors and Officers Insurance, Institutional Investor 231 (Aug. 1985). Some analysts suggest that recent dislocations are attributable to increased uncertainty resulting from unforeseen evolution of legal doctrines and unanticipated interpretations of insurance contracts. See, e.g., Hogarth & Kunreuther, Ambiguity and Insurance Decisions, 75 Amer. Econ. Rev. 386 (May 1985). To the extent that uncertainty generated by the judicial and regulatory environment adds to the cost and difficulty of obtaining insurance coverage, the Commission, Congress, and the courts can assist the market by defining with greater precision the circumstances under which directors, officers, and accountants can be held liable and the potential extent of such liability.

Unfair Trade Practices

The President in a recent statement on trade asked all Federal agencies to be alert to any unfair trade practices on the part of foreign countries against American concerns.

Question 10: Are you aware of any such practices on the part of any foreign country against our securities industry and will you be diligent in watching out for such practices and reporting them to us should they occur?

Response to Question 10: The United States has a comparative advantage in the international financial services marketplace. There is substantial and legitimate concern that Japan, Korea, and other foreign nations maintain nontariff trade barriers that are designed to protect their domestic financial services industries from more efficient U.S. competitors. Such foreign protectionism is a serious threat to international commerce based on mutually advantageous trade.

The United States Government has already approached foreign nations regarding these trade barriers. For example, the United States has protested against barriers that prevent U.S. securities firms from becoming members of Japanese exchanges and regulations that prevent U.S. banks from managing trust accounts in Japan. See Report on Yen/Dollar Exchange Rate Issues by the Japanese Ministry of Finance - U.S. Department of the Treasury Working Group to Japanese Minister of Finance Noburu Takeshita and U.S. Secretary of the Treasury Donald T. Regan (May 1984). Recently, the President has also decided to institute Section 301 proceedings against Korea because of the barriers that country imposes on entry by U.S. insurance companies.

I will be diligent in searching out foreign protectionism directed against any sector of the Nation's financial services industry or investment community, and will bring evidence of such practices to the appropriate agencies, offices of the Executive Branch, or Committees of Congress. I will also cooperate in formulating and implementing trade strategies that

will promote international trade and reduce foreign barriers to exports of U.S. services and manufactured goods.

Question 11: How about the problem some American firms have had listing on the Tokyo stock exchange -- how do you account for their problem?

Response to Question 11: Until 1982, non-Japanese firms were prohibited from becoming members of the Tokyo Stock Exchange. Although that restriction has been lifted, no United States firm currently holds a Tokyo seat. Merrill Lynch recently bid for a seat on the Exchange, but that seat was sold to a higher, Japanese bidder. Merrill Lynch has publicly stated that it has no objection to the fairness of the bidding process used in the allocation of that seat. The number of seats on the Tokyo Exchange is, however, fixed and transactions in seats that could allow U.S. entry occur only infrequently. Accordingly, in order to allow greater competition for financial services within Japan, and in order to provide a meaningful opportunity for entry by efficient non-Japanese firms, more aggressive measures to reduce barriers to entry to the Tokyo and other Japanese exchanges should be pursued. On September 26, 1985, it was reported in the Wall Street Journal that the Tokyo Exchange has formally decided to increase its membershipp from 83 to 93. Browning, Tokyo Exchange: To Join or Not to Join? Wall Street Journal,

Sept. 27, 1985, at 32. Developments in this market should be carefully monitored to assure that meaningful opportunities for entry are provided for all non-Japanese firms.

Glass-Steagall

The Administration supports the concept of a one-step financial shopping center where presumably a consumer could get all of his banking, securities, real estate and insurance needs met under one roof.

Question 12: Do you support such a concept?

Response to Question 12: I do not support or oppose any particular market structure for the financial services industry. Instead, I would rely on competitive processes to determine the industry structure most beneficial for the economy, provided that the safety and soundness of depository institutions, and the integrity of federal insurance funds backing those institutions, are not threatened.

Question 13: Do you believe that banks should be allowed to offer securities services?

Response to Question 13: I believe that the securities market and banking industry are best served by policies that vigorously promote competition and new entry while protecting the integrity

of the marketplace. To the extent that banks can efficiently offer securities services and thereby introduce beneficial competition into the marketplace, without threatening the market's integrity or generating risks that Federal depository insurance agencies are unwilling to assume, bank entry can be beneficial for the securities market, the banking industry, and for the economy as a whole.

Question 14: Do you believe Glass-Steagall should be repealed?

Response to Question 14: The Glass-Steagall Act was passed in 1933. In the intervening fifty-two years, there have been radical changes in the nation's economy and in the structure of domestic and international markets. It is difficult to believe that any statute that defines the contours of an industry's organizational structure in a manner that may have been appropriate for the economic conditions of the 1930's can, without change, also prescribe an optimal structure for the 1980's and beyond. Careful attention should be given to the Glass-Steagall Act to determine whether the events of the last fifty years suggest changes that could improve performance of the financial marketplace.

Foreign Listings

Question 15: Do you think foreign companies should be encouraged to list on United States exchanges and, if so, how do you think this should be accomplished?

Response to Question 15: Foreign companies should be neither encouraged nor discouraged from listing on United States exchanges. Listings should be determined as the outcome of a competitive process in the international capital markets.

Question 16: What would you do about listing and disclosure requirements?

Response to Question 16: Listing and disclosure requirements for foreign domiciled issuers present difficult legal and economic issues on which there is a wide divergence of opinion. The Commission has issued a concept release requesting comments on common prospectus and reciprocity approaches to the trading of foreign securities in the U.S. securities market. See, Facilitation of Multinational Securities Offerings, 50 Fed. Reg. 9,281 (March 7, 1985). This concept release has attracted extensive comments from a wide range of interested parties. As a Commissioner, I would carefully review these comments and other relevant materials before forming an opinion as to listing and disclosure requirements for foreign securities traded in U.S. markets.

National Market System

In 1975 Congress directed the Commission "to facilitate the establishment of a national market system for securities." The Congress also found that "the linking of all markets for

qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders."

Question 17: What is your concept of a national market system and a linked market?

Response to Question 17: Few sectors of our economy have changed as much in the past decade as the computer and telecommunications industries. Had Congress or the Commission set out in 1975 to define with specificity the linkages, communications networks, and data processing facilities that should be used to establish a national market system, there is a substantial probability that the system would already be outmoded and obsolete. Fortunately, the 1975 Amendments to the Exchange Act did not require that the Commission exercise such prescience. Instead, the 1975 Amendments direct the Commission to "facilitate" -- not to dictate -- the establishment of a national market system. Thus, the 1975 Amendments wisely contemplate a continuing evolutionary process whereby the form and function of the national market system can adapt in response to new technologies and market conditions. I support efforts that will allow continued evolution of the national market system

and formation of linked markets in response to changing technological and economic conditions. By its nature, the task of facilitating the establishment of a national market system can never be complete. The Commission is probably well-advised to focus on the processes by which markets respond to new opportunities for linkage rather than concentrate on the particular degree of linkage that may exist at any one point in time.

Professional vs. Individual Investors

Question 18: To what extent, if at all, are you concerned that there is a growing public perception that the markets today tend to favor the professional over the individual investor and how concerned are you that the individual average investor is losing confidence in the fairness of the markets?

Response to Question 18: I am concerned about the growing public perception that the markets favor professionals over individual investors. Individual investors are important participants in the market process, and a loss of confidence in the fairness of the market could have serious, adverse implications for the markets, investors, and the economy.

The perception of a "professional advantage" in the marketplace must, however, be tempered by the facts. On average and over time, professional mutual fund managers and pension fund managers have failed to measure up to the performance of risk-adjusted market aggregates. Thus, a small investor who achieves

results that match or exceed the risk-adjusted performance of the S&P 500 index is actually doing a better job than many of the "professionals" who supposedly have an advantage in the market. Moreover, to the extent that professionals invest substantial energy and effort in understanding market trends, and to the extent that professionals are able to profit from trades based on such legitimately obtained information, the rewards earned by professionals constitute a competitive return to the efforts they invest in understanding the market and in allocating capital in anticipation of future market developments.

It is also helpful to recall that small investors who prefer to obtain professional management are able to do so by investing in mutual funds or other investment vehicles that are professionally managed. The wisdom of such a choice depends, of course, on the relative abilities of the individual investor and the professional retained to manage the investor's funds. Individual investors are generally best able to decide whether they would be better off investing for their own account or through a professional. Accordingly, it is not entirely correct to view the individual investor and the market professional as adversaries because professionals are often investing on behalf of individual investors and the professionals' profits are often passed on to mutual or pension fund investors.

Markets

Question 19: What steps, if any, do you believe the Securities and Exchange Commission should take to dilute the stock market swings that have been occurring as a result of the expiration of stock-index option contracts?

Response to Question 19: Commission staff have already suggested to market participants that position limits be telescoped in order to limit market swings that can result from the expiration of stock-index option contracts. The program trading that gives rise to these swings is a relatively new phenomenon. Many market observers suggest that the problems, if any, that are created by these programs are self-correcting and will diminish over time. Many market observers also suggest that the aggregate effect of these program trades is beneficial because the price increases (or declines) that result when the participants establish their positions are offset by the price declines (or increases) that result when participants close out the same positions. Moreover, the creation of these program trading positions has the benefit of preventing index-option prices from straying too far from the price of the underlying securities. Thus, program trading can save some traders from buying securities that are priced too high relative to their futures or equity market analogues, and save other traders from selling at prices that are too low. I would therefore move

judiciously in this area, and seek to assure that the Commission understands all aspects of the market's behavior before it concludes that there is a problem requiring regulatory intervention.

Question 20: Do you see any problem with side by side trading of equities and options and what precautions, if any, do you believe should be taken to prevent potential abuses?

Response to Question 20: The Commission has recently authorized an experimental side-by-side trading program. The Commission will be carefully monitoring the markets' performance to determine whether precautions are necessary and how such precautions should be implemented. It is, however, instructive to note that warrants and their underlying shares have, for decades, been traded on a side-by-side basis, on both the New York and American Exchanges. Warrants have characteristics that make them similar to traded options. To the best of my knowledge, there have been no instances of abuse related to the side-by-side trading of warrants and their underlying shares. If that information is correct, it suggests that side-by-side trading is not inherently dangerous, and that side-by-side trading can be conducted on a responsible basis. The Commission's experiment does not, however, take for granted that trading abuses will not arise. Therefore, the experiment requires that all side-by-side traders maintain audit trails that will allow the Commission to investigate potentially manipulative transactions.

Before reaching a conclusion regarding the costs and benefits of side-by-side trading, I would carefully consider the data generated by the Commission's experimental program.

Question 21: How do you see the exchange markets on one end and the dealer markets on another interacting or interfacing in the future?

Response to Question 21: In general, I expect that there will be increased competition between exchanges and dealer markets as new instruments are introduced and as traders seek the most efficient means of effecting transactions. In some areas, however, there may be increased cooperation as the exchanges and market-makers discover the benefits resulting from shared information and greater liquidity. Such competition and cooperation should, in the aggregate, improve market performance for investors and issuers, although it may burden individual market participants who are unwilling or unable to adapt to changed market conditions, advancing technology, or increasing competition.

Question 22: What effect, if any, do you think mixing the dealer and exchange markets will have on trading activity and trading strategy in the future?

Response to Question 22: Dealer and exchange markets have differing performance characteristics. In some situations, specialist-based exchanges may have an advantage whereas in other

circumstances dealer markets may be more efficient. On the whole, trading can be expected to migrate to markets that rely on the most efficient trading systems. From a trader's perspective, allowing competition among exchanges and dealers will allow securities to be traded in the most efficient available market. This will, in turn, promote greater returns to investors and stimulate transactions volume by lowering the cost of buying and selling shares.

Market Structure

Question 23: What do you believe are the main market structure issues that should be considered by the Commission and what are your thoughts regarding how they should be addressed?

Response to Question 23: I agree that the issues identified by Chairman Shad in his testimony before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce on June 17, 1985 are significant and should be addressed by the Commission. These issues are: (1) listing requirements and shareholder approval provisions; (2) options trading on over-the-counter stocks, including multiple trading and side-by-side trading; and (3) unlisted trading privileges in over-the-counter shares. In addition, I consider the questions raised by internationalization of securities markets to present significant market structure issues that should be addressed by the Commission. In each situation, I believe the

issues should be addressed through careful consultation with the affected investors, exchanges, dealers, and issuers. In each situation, I would initially search for a resolution that promotes responsible competition among all affected parties. In addition, where, because of potential market failures or market imperfections, material uncertainty exists as to the potential adverse consequences of increased competition, I would support the adoption of appropriately designed experimental programs crafted to generate the information necessary for responsible decisionmaking by the Commission.

Internationalization

Last year I suggested that the Commission make a study of the accelerating internationalization of the securities and currency markets and the implications of such internationalization with respect to the United States securities and currency markets.

The House in its recently passed SEC Authorization mandated that such a study be conducted.

Question 24: As we move increasingly from a national trading system to a global trading system what issues do you think will have to be addressed and how would you propose addressing them?

Response to Question 24: As the securities markets become increasingly internationalized, the SEC will encounter serious enforcement, disclosure, and listing issues. The Commission has already addressed these issues through three concept releases: (1) Release Requesting Comments Concerning a Concept to Improve the Commission's Ability to Investigate and Prosecute Persons Who Purchase or Sell Securities in the U.S. Market From Other Countries, 49 Fed. Reg. 31,300 (Aug. 6, 1984) (the "waiver-by-conduct" release); (2) Facilitation of Multinational Securities Offerings, 50 Fed. Reg. 9,281 (March 7, 1985) (the "reciprocal registration" and "common prospectus" release); and (3) Request for Comments on Issues Concerning Internationalization of the World Securities Markets, 50 Fed. Reg. 16,302 (April 25, 1985) (dealing with international trading, multinational distributions of securities, and international enforcement problems).

The Commission has received extensive comments in response to these releases. These responses suggest that certain approaches, such as waiver-by-conduct, raise substantial problems that are likely to limit their effectiveness. Under current market conditions, I would continue to solicit advice and recommendations from all affected parties, particularly interested foreign governments and exchanges. Moreover, because it is difficult to see how the United States could effectively control the international market through unilateral actions, I would concentrate on proposals that rely on bilateral or multilateral understandings

to control future development of the international marketplace and avoid approaches that seek to impose the United States' will on our sovereign trading partners.

Regulation vs. Deregulation

Question 25: What areas or activities, if any, within the jurisdiction of the SEC do you think should be subject to less regulation and which areas, if any, do you think should be subject to additional regulation?

Response to Question 25: If a regulation imposes costs that exceed the regulation's benefits, then the Commission should consider repealing that regulation. New regulations should be adopted only if they pass a cost-benefit test. In situations where there is uncertainty as to whether a new or existing regulation generates benefits in excess of its costs, the Commission should, where feasible, consider designing experiments to determine whether benefits exceed costs.

Enforcement

I gather from your confirmation statement that you have personal experience in successfully prosecuting a securities fraud action on behalf of your wife's parents.

Question 26: How firmly committed are you to a strong enforcement division and what types of cases would you like to see prioritized given the current marketplace environment?

Response to Question 26: I am firmly committed to a strong SEC enforcement effort. Fraud and deception detract from the efficiency of the marketplace because they force investors to expend valuable resources to verify the integrity of the information upon which their investment decisions are based. Fraud and deception thereby erode confidence in the market and can reduce the number of participants in the securities markets. I would place greatest enforcement emphasis on cases in which fraud and deception detract most from efficient market performance, and in which Commission enforcement actions produce a deterrent effect that is not adequately replicated through private enforcement actions.

Funding

In its recent authorization request the SEC made the following statements. With respect to Market Regulation:

> "The expanded volume and complexity of the securities trading markets have increased program workload. All market activity indicators are up sharply for the past five years: Stock exchange share volume has increased by 228 percent, over-the-counter share volume has risen 450 percent, and exchange option contract volume has grown 224 percent. Complicating this growth are new entrants to the securities services industry, new securities products and the growth of the regulated professional population."

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Yet the Commission requested a reduction in the number of staff positions in the Division of Market Regulation from 135 in 1984 to 120 in 1985 and they are content with 120 positions in 1986.

With respect to the Division of Enforcement the Commission states that

> "The rapid growth of the securities industry has been accompanied by increases in the indices of potential fraud. However, as complex financial instruments proliferate and markets cross national boundaries, the pursuit and deterrence of fraud becomes increasingly difficult. Consequently, the program must have adequate resources to effectively carry out its responsibilities in a highly technical area of the law."

Yet the resources and staff positions in 1986 for the Division of Enforcement remain frozen.

One former SEC Commissioner appointed by President Reagan has expressed concern that the SEC is becoming a "paper tiger."

Question 27: If confirmed as an SEC Commissioner will you advocate and fight for adequate funding for the agency to achieve its legislative mandate?

Response to Question 27: I will certainly advocate adequate funding for the agency to achieve its legislative mandate in a cost-effective manner. It is, however, worthwhile to recognize

that the Commission's budget materially understates the aggregate value of the public and private resources devoted to enforcement and market surveillance activities. The exchanges, NASD, and individual broker-dealers expend millions of dollars each year assisting the Commission in its enforcement and surveillance efforts. In addition, the securities laws provide numerous private rights of action and the Commission has historically promoted such private rights as a valuable adjunct to Commission enforcement activities. See, e.g., Bateman Eichler, Hill Richards, Inc. v. Berner, 105 S.Ct. 2622, 86 L.Ed.2d 215 (1985); Herman & MacLean v. Huddleston, 459 U.S. 375, 103 S.Ct. 683, 74 L.Ed.2d 548 (1983). In order accurately to assess the adequacy of the Commission's budget, the Commission's activities must be considered in a larger context that includes expenditures by self-regulatory organizations and private parties on enforcement of the securities laws.

Independence of SEC

As you know the SEC is supposed to be an independent regulatory agency yet increasingly we hear of OMB and executive branch influence over the agency.

Question 28: What is your concept as to the role of the SEC as an independent agency?

Response to Question 28: The SEC's status as an independent agency is defined primarily by the Securities Exchange Act of 1934, which created the Commission, the Administrative Procedure Act, which defines procedures to which the Commission must adhere, and numerous Supreme Court opinions that define the relationships between independent agencies, Congress, the Executive Branch, and the Judiciary. As a Commissioner, my conception of the SEC's role as an independent agency would be guided by these statutes and judicial decisions.

SEC as Profit Center

The SEC is currently a profit center for the U.S. government. Over the past two years the Commission has had a surplus of $35 million and about $50 million is projected for next year.

Question 29: Do you think the budget of the Commission is currently adequate to meet its mandate and what do you think should be done with the recent annual surplus?

Response to Question 29: Based on information submitted to Congress, it appears to me that the Commission's budget is currently adequate for the Comission to meet its mandate. The disposition of the Commission's "surplus" is governed by a statute that requires all Commission revenues generated through fees to be paid to the Treasury. See 31 U.S.C. §3302.

Federal Law vs. the marketplace

Question 30: Do you believe that continued federal involvement in restricting insider trading is warranted or do you think that the marketplace could deal with this adequately without the help of the SEC?

Response to Question 30: Federal involvement in restricting insider trading is warranted to the extent that such involvement generates benefits that exceed its costs. In considering the cost-benefit tradeoffs raised by Federal involvement in insider trading cases it is important to recall that private parties often have standing to prosecute these actions. The Commission has actively supported private parties' rights to bring insider trading and fraud cases and views these cases as a valuable adjunct to the Commission's own enforcement efforts. See, e.g., Bateman Eichler, Hill Richards, Inc. v. Berner, 105 S.Ct. 2622, 86 L.Ed.2d 215 (June 11, 1985) (SEC filed amicus brief in support of investors' right to sue broker who had defrauded investors by conveying false information that was characterized as accurate inside information); Herman & MacLean v. Huddleston, 459 U.S. 375, 103 S.Ct. 683, 74 L.Ed.2d 548 (1983). Accordingly, Federal involvement is not a necessary precondition for successful prosecution of all insider trading cases, and continued federal involvement in this area should be viewed as part of a cooperative private-public enforcement effort.

Question 31: How about the Williams Act -- if you had your way, do you think this law ever should have been written or would you have preferred to let the marketplace, corporations, and the states regulate this area?

Response to Question 31: The Williams Act was adopted in 1968 in response to "Saturday Night Specials" -- tender offers made on rapid timetables. Congress found that these rapid offers did not allow stockholders adequate opportunity to review the terms and conditions of the offer and thereby precluded stockholders from making adequately informed decisions. The Supreme Court has recently interpreted Section 14(e) of the Williams Act, the law's central antifraud provision, as requiring misrepresentation or nondisclosure in order to support a finding of manipulation in violation of the law. Thus, the Court found that Section 14(e) serves no purpose "other than disclosure" and that "[n]owhere in the legislative history is there the slightest suggestion that §14(e) . . . should be read as an invitation to the courts to oversee the substantive fairness of tender offers; the quality of any offer is a matter for the marketplace." Schreiber v. Burlington Northern, Inc., No. 83-2129, slip op. at 10 (U.S. Sup. Ct., June 4, 1985). In addition, the Court repeated the oft-observed view that the Williams Act was intended to preserve a "neutral setting" that avoids "tipping the scales either in favor of management or in favor of the person making the takeover bids." Id. at 7-8, citing 113 Cong. Rec. 24664 (1967) (Remarks of Sen. Williams).

The Williams Act's success is, in large part, attributable to its emphasis on a neutral approach to takeovers that permits the quality of offers to be determined in the marketplace. Since 1968, however, there have been substantial developments in the market for corporate control. These developments have occurred both in the techniques used by bidders to mount takeover contests and by incumbent managements seeking to defend against takeover bids. As I explained in my oral testimony, the market could possibly be improved by placing greater responsibility in the hands of individual corporations' stockholders to determine the terms and conditions on which the corporation and its stockholders will entertain takeover bids.

The CHAIRMAN. Dr. Freedenberg, while we're waiting, at least we can have you stand and be sworn.

[Whereupon, the witness was duly sworn.]

Dr. FREEDENBERG. I have an opening statement if you would rather I read that before Senator Johnston arrives, if I could do that to facilitate your time.

The CHAIRMAN. Do you know whether he's on his way or not?

Dr. FREEDENBERG. Yes; he is on his way.

The CHAIRMAN. Well, we'll give him a couple minutes.

Like most other Senators, he is not accustomed to how this committee runs on time. [Laughter.]

Dr. Freedenberg, would you like to begin with your opening statement and when Senator Johnston arrives we will take his statement and make sure that the record places his introduction in front of your opening statement.

STATEMENT OF DR. PAUL HERMAN FREEDENBERG, NOMINATED TO BE ASSISTANT SECRETARY OF COMMERCE FOR TRADE ADMINISTRATION

Dr. FREEDENBERG. Thank you, Mr. Chairman and Senators.

I am deeply honored to appear before you today to testify regarding my confirmation as Assistant Secretary of Commerce for Trade Administration.

I can think of no better training ground for the position I am about to assume than the job that I've held for the last 6 years.

The CHAIRMAN. Dr. Freedenberg, would you like to suspend. Senator Johnston, we have been anxiously awaiting your appearance.

STATEMENT OF J. BENNETT JOHNSTON, U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator JOHNSTON. Thank you, Mr. Chairman.

Mr. Chairman, I just wanted to interrupt my markup of my bill down in Energy to come say a word for Paul Freedenberg. I feel some proprietary interest in this outstanding public servant and in his career because I recruited him for Government service.

He was a professor of political science down at Tulane University. I had come to know him. He had done some research for me. As a matter of fact, when I was first running for office I asked someone who would be a good one to consult on some arcane and difficult issue and they said, "Well, Paul Freedenberg." I got to know him and said, "That man ought to be in Government." And indeed, I was lucky enough to have him for a couple of years.

I have recommended him for each promotion he has gotten since then and I think he really has an extraordinary capacity and ability to deal with these difficult trade issues.

I would just like to recommend him in the highest way to this committee.

The CHAIRMAN. You know, back in 1977 when we considered hiring him on the minority staff at that time, that was the only negative. [Laughter.]

Senator JOHNSTON. You see he corrected his mistake and he left.

The CHAIRMAN. We looked at his background and it was all fine and then we saw who he had worked for and we had to look at it very carefully. But he has been an outstanding——

Senator PROXMIRE. If I could interrupt, I'd just like to say that I thought that Dr. Freedenberg sprang from the clean, clear brow of the chairman of the Banking Committee and I had no idea that he also worked for Bennett Johnston, but then, nobody is perfect. [Laughter.]

Senator JOHNSTON. I hope he doesn't get turned down now.

The CHAIRMAN. Nevertheless, we do appreciate your endorsement and we'll ignore it.

Senator JOHNSTON. Thank you, Mr. Chairman, I guess. [Laughter.]

The CHAIRMAN. Paul, would you like to proceed.

Dr. FREEDENBERG. I'll continue. I can think of no better training ground for the position I'm about to assume than the job I held for the last 6 years. The Banking Committee in general, and the Subcommittee on International Finance and Monetary Policy in particular, have been at the center of a great number of the key trade issues in the 1980's.

INVOLVEMENT ON VARIOUS TRADE BILLS

As a member of the committee staff, I've been involved with the revision of the Foreign Corrupt Practices Act, rechartering of the Export-Import Bank, and increases in the International Monetary Fund quota, and worked on the International Lending and Supervision Act, and the Export Trading Company Act of 1982.

Work on those bills sensitized me to the economic and political context of America's trade problems. More important, however, with reference to my future position with the Commerce Department was my work with the Export Administration Act of 1985. The 2½-year process of drafting and redrafting that act and the hundreds of hours of staff conferences associated with the final product educated me to the enormity of the task before me at the Commerce Department.

It's a great privilege as well as a great challenge to be nominated to the position of Assistant Secretary of Commerce for Trade Administration. In that job I know I will have to make decisions which not only frame the context of our Nation's capacity to protect its technological superiority over potential adversaries, those decisions will also have an effect on the strength and economic viability of some of our most productive and innovative high-technology industries.

That I've been chosen by the President and received bipartisan support from Senators for that position is all the more challenging, as I try to live up to the expectations of my supporters. I promise you my best effort not only at vigorously and fairly executing the law but also my close attention to reconciling the twin goals of efficient administration and close attention to our Nation's national security concerns.

I have always believed that there is no necessary conflict between those two goals, and the Export Administration Act was written with that objective in mind. I am convinced that with up-

graded and time-shortened license processing, increased multilateral cooperation, and improved cooperation and coordination among governmental agencies that enforce and administer the export controls, those goals can be achieved in a way that will satisfy both those concerned with increasing U.S. high-technology exports and those concerned about national security implications of technology transfer to our potential adversaries.

Since I don't want to filibuster my own nomination, I think I'll pause now and answer any questions you might have.

The CHAIRMAN. Thank you very much.

Dr. Freedenberg, will you make every effort in your service as Assistant Secretary of Commerce not only to avoid conflicts of interest but to avoid even the appearance of conflicts?

Dr. FREEDENBERG. I will.

The CHAIRMAN. Do you agree to appear and testify before this committee and other duly constituted committees of Congress when requested to do so?

Dr. FREEDENBERG. I do.

The CHAIRMAN. First of all, let me say, Paul, that in your own statement of qualifications you say:

> Most importantly with regard to export control issues, I helped to draft both the Export Administration Act of 1979 and the Export Administration Act Amendments of 1985.

You understate the case.

Having worked with you intimately over those years and hours and hours and days and months and 6 months of conference on the last Export Administration Act, let me say without reservation that the act would not have been passed without your participation. So when you say you helped, that is a vast understatement of your responsibilities and the work you did on seeing that that bill got through. We both had a great deal of frustration. It was not the bill that you and I would have preferred to have as we started out on this whole issue of export trade and particularly that of high technology. But under the circumstances, I think it's as good a bill as we possibly could have worked out and you deserve the majority of the credit for that.

So I didn't want your understatement of your own qualifications to be left unanswered.

Dr. FREEDENBERG. Thank you, Mr. Chairman.

The CHAIRMAN. Earlier this year the President issued a directive providing for the Department of Defense to share review authority with the Commerce Department for certain individual validated licenses to certain Western countries. That directive also provided for the Defense Department in the near future to begin reviewing distribution licenses.

When do you expect this part of the President's directive to be implemented fully?

Dr. FREEDENBERG. Since I'm not a member of the administration yet, I'm not sure exactly what the timing is, but I understand it will be soon and I fully intend to help in the implementation of that. I think that's clearly the intention of the President. I know that it has wide congressional support.

The CHAIRMAN. It's an interesting position. The questions I'm going to ask, after all these years, I know what your answers are going to be. Nevertheless, I would like them in the record. On some of the things, obviously you know how I feel.

INADEQUATE ENFORCEMENT OF NEW REGULATIONS

I have been very critical of the distribution license system, both the way it has operated in the past and also as it is proposed to operate under the new regulations recently issued by the Department of Commerce. Perhaps the greatest problem I have with the new regulations is that the enforcement of the regulations doesn't appear to me to be adequate.

Commerce officials have indicated their hopes to be reviewing approximately 100 distribution licenses per year of which only 60 reviews or audits would be of actual license holders. The other 40 would be of export recipients. Since we expect to have well over 1,000 distribution licenses in existence in the near future, this would mean that the average license holder could expect to be audited no more frequently than once every 10 years or so on the average.

What do you think should be done to provide for more adequate auditing and enforcement of the distribution license system?

Dr. FREEDENBERG. I think there are two things that can be done. First of all, more resources can be brought to bear on that area. But as well as resources, one of the things that can be done is to put in spot checks. That is, while you don't have the resources to do a complete audit, I think the fact that there might be random checks of particular licenses at any particular time would tend to make the exporting community realize that the regulations are serious and that they ought to stay in full compliance with those regulations, because they will be answerable at any time during the period they hold that license.

The CHAIRMAN. Well, you know very well how strongly I have felt about this whole issue of high-technology transfer and you also very well know of my criticism of Commerce's performance in these areas. So I would only say as a word of friendly advice at this point, you will be rather a lone voice down there on some of these issues. I hope you can maintain the perspective we had here from the outside looking in, and not be co-opted in any way by some of those down there. I don't mean that in a critical way at all, but just as you and I have discussed many times, the good intentions down there do not always translate into adquate control policies.

Dr. FREEDENBERG. I think my nomination in some ways is a recognition that the perspectives that have come out of the Banking Committee are valid ones and that they should be integrated into Commerce Department operational codes, so to speak, and I know I will always be a strong voice on those issues. I think everybody is aware who I've been staffing, what my perspectives are, and the President has gone ahead and nominated me for that spot with that in mind.

The CHAIRMAN. The Department of Commerce in the past has interpreted section 12(c) of the Export Administration Act [EAA] as requiring Commerce not to share certain information with other

agencies of the Government, particularly other law enforcement agencies of the Government such as the Customs Service.

How do you read section 12(c) of the act?

Dr. FREEDENBERG. I see it as protecting business confidential information from public but not from other Government agencies.

The CHAIRMAN. So you don't see that in any way inhibiting the sharing of information between the Department of Commerce and Customs?

Dr. FREEDENBERG. No. I see no reason why there should be battles over that at all.

The CHAIRMAN. Critics of EAA and of our export control laws in general have argued that export controls are an unnecessary burden seriously affecting our balance of trade.

I certainly have seen very little evidence to back that view and have simply rejected that as a valid argument.

How do you view that question?

EXPORTERS WANT PREDICTABILITY AND EFFICIENCY

Dr. FREEDENBERG. I have heard the arguments. I haven't seen serious studies that validate that argument. I think the major thing that the exporters want is predictability and efficiency. They aren't looking for a softening of the laws, or changing the laws, or a sort of a free ride in that area. I think most of the major high-technology companies are happy with the system. What they want is to make the system work, make sure the decisions are made promptly and that the export control process is a predictable one that they can make business decisions on the basis of.

And I haven't seen studies that somehow our high-technology exports have been seriously affected by the export control system.

The CHAIRMAN. And certainly I have seen no evidence that there's been any significant impact on our balance of trade. When we're looking at a huge trade deficit, in excess of $100 billion a year, although certainly I agree there's been a lot of bureaucracy and a lot of complications over products that should not be held up, while letting some of those that should be controlled slip through the sieve. But I just can't accept the argument, and would not expect that you could either, that it has a significant impact on the balance-of-trade deficit, which is in excess of $100 billion.

Dr. FREEDENBERG. No; I don't see that argument as a valid one.

The CHAIRMAN. Even if it did, would you support softening of our trade export control laws?

Dr. FREEDENBERG. I think there's a balance sheet there. In the recent studies by B.K. Dynamics and the Defense Department's own estimates show that you have costs involved in offsetting technology that gets into Soviet hands. So while you have the positive side in increased trade, the negative side can't be ignored either. It's simply too high a price to pay. I think the argument should be phased more in terms of allied cooperation; that is, that much of this technology has gone through third countries or through our allies. That's where the focus should be, and that obviously there's no sense in keeping it from a United States exporter if it's going to be sold by a French, or German, or Japanese exporter. That doesn't do anyone any good.

The CHAIRMAN. One of the most controversial issues during the review of the Export Administration Act was the question whether controls should be placed on our exports to allied countries. Legislation was passed in the House of Representatives that would have decontrolled all of our trade with CoCom countries.

In view of the spy scandals in West Germany and England and elsewhere, and current patterns of diversion of our technology to the Soviet Union through our allies, do you believe that controls on exports to Western countries are still justified?

Dr. FREEDENBERG. I think they are well justified. The final compromise, as you know, Mr. Chairman, was to cut out some of the bottom end, the so-called administrative exception list. That's fine. That allows you to focus on the most important things. But clearly, if you give up all your export controls to the CoCom countries without agreement about enforcement and without agreement about all the licensing procedures, you're actually allowing your technology to go to the lowest common denominator of controls, and that doesn't make any sense. Then you invalidate your own system.

So I think that the compromise that was struck makes sense, and I think on reconsideration of the original legislation I think others will recognize that this was the best way out of that request, so to speak—the best compromise.

The CHAIRMAN. Senator Proxmire.

Senator PROXMIRE. Mr. Chairman, I commend the President for nominating Paul Freedenberg to be Assistant Secretary of Commerce for Trade Administration.

For the last 5 years Paul has done an outstanding job as staff director for our Subcommittee on International Finance and Monetary Policy. During his tenure in that position, Paul played a key role in helping the committee shape an Export Administration Act to slow down the hemorrhage of our militarily critical technologies to the Soviet Union.

So I think the President has wisely chosen Paul Freedenberg to help administer that very critical piece of legislation.

Mr. Freedenberg, as you know, Chairman Garn and I are cosponsoring the Financial Export Control Act which would amend the Export Administration Act to authorize the President to control bank loans and other extensions of credit to the Soviet bloc.

The administration has not yet taken a position on that legislation and I understand that there's quite an interagency struggle going on over this matter.

If confirmed, would you counsel your superiors in Commerce to support that legislation?

Dr. FREEDENBERG. I would add my voice to it. I'm not a member of the administration now, and so I can speak a little freer. I think that the thrust of the act is simply to add a new power for the President in a noncrisis situation, and personally I see no reason you wouldn't want to have that sort of authority, particularly since any sort of major loan, any sort of package of loans, has political implications. You can't make an apolitical loan. And to have the authority to control those sorts of decisions or those sorts of financial packages is a valid authority for the President to have.

Again, I'm speaking more from my private status which I'll have for a few more weeks I assume.

Senator PROXMIRE. Well, as long as you make that point and make it strongly, it just gives the President a power that he can use at his discretion and I think that that ought to be quite persuasive.

TRADE SHOULD BE PART OF OUR STRATEGIC PLANS

During our hearing last week on the Financial Export Control Act, I said that our trade with the Soviet Union should not be apolitical but rather should be treated as part of our overall strategic dialog with that country.

Do you share that view and, if so, why; and if not, why not?

Dr. FREEDENBERG. Well, the irony—there is nothing that's done in our relations with the Soviet Union that is apolitical. The Soviets in every dealing with us recognize the political implications of what they're doing. I think—that doesn't mean you have to declare economic warfare, but you simply can't undertake a trade policy, say, a lessening of export controls, or lifting of sanctions, or a major loan which will facilitate construction of a factory in the Soviet Union, or for general purposes in the Soviet Union, without having a political implication.

I think you have to avoid extremes. That is, either trying to somehow win the confrontation with the Soviets through trade policy or trying to woo the Soviets and think that you're going to make them your friends through trade policy. I think trade is a constant source of signaling—trade and financial flows as well—and you have to be aware of that. I think our own Government is, but I think sometimes the advocates of increased trade forget the political implications of it.

Senator PROXMIRE. Finally, I understand that one problem we now face in CoCom is that our partners there are holding up approval of our export license for China because we insist on tight controls of their, the Chinese, militarily critical exports to the Soviet Union.

Are you aware of that problem and do you know of any plans by the administration to help resolve it?

Dr. FREEDENBERG. I'm aware of the problem. I've heard that there's a new—since, again, I'm not in the administration yet, I've heard that there's a new agreement to shorten the list. That is, again to cut out the lower end of the list that would go to CoCom. But I think CoCom from time to time is used politically, and this is one case where it is. We're increasing our trade with China, mostly at the low end, and some of our European allies would like to increase trade with the Soviet Union and the East, and apparently we're getting into that political confrontation over it.

I think from what I've seen of what we're trying to ship to China in general, certainly the low technology makes sense. It's a way of allowing them to be a good trading partner, and I would hope we could work out an amicable agreement within CoCom to facilitate that.

Senator PROXMIRE. As you say, you're not a member of the administration now. Could you look into this and give us a written report within a month after your confirmation?

Dr. FREEDENBERG. I would be happy to.

Senator PROXMIRE. The staff has suggested one other point. Following up on the chairman's question, if confirmed, will you work to bring about DOD's review of distribution licenses as soon as possible and will you also within 1 month after assuming your new duties give us a written report on when the President's order will be fully implemented?

Dr. FREEDENBERG. I would be happy to give you a report. As I said in my earlier statement, I have every intention of complying with the President's directive. I don't know what's held up implementation up to now, but I will look into it and give you a report.

IMPORTANCE OF DOMESTIC MACHINE TOOL INDUSTRY

Senator PROXMIRE. As you're aware, the President is yet to act on the 18-month-old recommendation by Commerce Secretary Malcolm Baldrige that machine tool imports do indeed threaten the national security and that trade protection for the domestic machine tool industry is justified.

Do you agree that import protection is necessary to save the domestic machine tool industry for national security reasons? If so, what would you see as appropriate relief for that industry?

Dr. FREEDENBERG. Let me give background on that. I worked actually as minority staff for the Joint Committee on Defense Production when you were the chairman. I became aware of the machine tool industry's problems and their role particularly in defense mobilization. I recognize that machine tools do play a very important role in our national security defense industrial base.

I think right now that the machine tool industry has petitioned for section 232 relief which would allow the President to impose, I think, quotas after he decides what part of the market should be protected. I think that that sort of relief is a valid way to handle a peculiar type of situation, where you have a very critical industry that you can't allow to slip into insignificance, and I will try to lend my voice and my perspective—and again, what I said earlier, that I've gained really from my experience with the committee to that debate, and I do feel that 18 months, as you point out, is an awfully long time to leave an industry dangling. You have to be predictable in Government decisions, so that the industry can make its own plans.

Senator PROXMIRE. Particularly an industry that is so essential for our national security. It's one thing to have shoes, although I think that's a tragedy too—that's a separate issue, but we can probably do all right with bare feet, but we can't do all right without machine tools as far as our national security is concerned.

Dr. FREEDENBERG. The first thing that I did when I was working with the Joint Committee on Defense Production was to look at the industrial base, and you have to have that surge capacity, so I couldn't agree with you more.

Senator PROXMIRE. Thank you very much.

The CHAIRMAN. The Export Administration Act as we amended it this year provides authority to deny imports into the United States from violators of our export control laws or under certain circumstances from violators of CoCom controls.

Would you in your new position be willing to exercise this authority where the circumstances required it?

Dr. FREEDENBERG. Definitely. That was one part there was a great deal of debate about with the administration. The administration finally came on board, and it's now administration policy. I see no reason why, if you have particularly a violator of U.S. export control licenses, why that violator, once he's convicted, should be allowed to have the U.S. market.

The CHAIRMAN. The Assistant Secretary of Commerce for Trade Administration is also the Chairman of the Advisory Committee for Export Policy [ACEP]. This Committee has been relatively inactive for the past 2 years. Prior to that, however, the ACEP was very active in coordinating the Government's export control policies.

Do you plan to revive ACEP to make it once again an active and effective means of coordinating administration export control policies?

Dr. FREEDENBERG. Yes; particularly since I would be the Chairman of that, I would welcome its revitalization. One of the reasons is there's been an Acting Assistant Secretary up to now, and I think it's a good way to bring the agencies together. I think one of the reasons that I was nominated was to get rid of some of the interagency turf battles and that would be one way of doing it, resolving it at an Assistant Secretary level.

The CHAIRMAN. I have no additional questions. I would like to say on behalf of Senator Heinz that he was not able to be here this morning. He would like to have been. He's down at a meeting at the White House and certainly supports your nomination and appreciates all the help you gave him in his responsibilities as chairman of the International Finance Subcommittee.

Dr. Freedenberg, we're very proud of you and your new appointment and we will expedite your nomination as rapidly as we can.

Dr. FREEDENBERG. Thank you.

The CHAIRMAN. The committee is adjourned.

[Whereupon, at 10:50 a.m., the hearing was adjourned.]

[Biographical sketch of nominee, response to written questions of Senator Mattingly, and additional material for the record follow:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Freedenberg (LAST) Paul (FIRST) Herman (OTHER)

Position to which nominated: Assistant Secretary of Commerce for Trade Administration

Date of nomination: September 17, 1985

Date of birth: 17 (DAY) / 02 (MONTH) / 43 (YEAR) Place of birth: Chicago, Illinois

Marital status: married Full name of spouse: Roberta Horberg Freedenberg

Name and ages of children: Joshua Michael - 11

David Eli - 6

Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of Illinois	1/1/61 - 1/30/65	B.A.	January, 1965
University of Chicago	10/1/65 - 5/1/67	M.A.	October, 1967
University of Chicago	5/1/67 - 8/30/70	Ph.D.	March, 1972

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Bachelor's Degree with Distinction and Honors from University of Illinois

National Aeronautics and Space Administration Fellowship 1967 - 1970

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
American Economic Assn.	none	01/81 - Present
American Political Science Association	none	09/69 - 08/76

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

Job Description/ Title	Employer Name	Location	Dates
Economist	Senate Banking Committee	534 Dirksen S.O.B. Washington, DC 20510	01/03/81- Present
Minority Professional Staff	Senate Banking Committee	see above	10/01/77- 01/02/81
Minority Staff Member	Joint Committee on Defense Production	Room 421, Old Immigration Bldg. DC 20510	05/01/77 09/30/77
Legislative Assistant	Office of Senator J. B. Johnston	136 Hart S.O.B. Washington, DC 20510	01/01/76 04/30/77
Assistant Professor	Department of Political Science	Tulane University New Orleans, LA 70118	09/01/70 12/31/75
Lecturer	University of Chicago	5801 S. Ellis Ave. Chicago, IL 606--	10/01/69 05/31/70
P/T Administrative Assistant	Committee on Int'l Relations	Univ. of Chicago Chicago, IL 60637	09/01/66 08/31/67

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Legislative Assistant to Senator J. Bennett Johnston/Jan. 1976-Apr. 1977

Minority Staff of Joint Committee on Defense Production/May 1977-Sept.1977

Minority Staff of Senate Banking Committee/Oct. 1977-Jan. 1981

Economist, Majority Staff Senate Banking Committee/Feb. 1981-Present

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

"High Technology and the Export Administration Act," in Michael R. Czinkota, Ed., Export Controls (New York: Praeger, 1984), pp. 169-176.

"U.S. Export Controls: Issues for High Technology Industries," National Journal (December 18, 1982), pp. 2190-2193.

"Oil and International Politics in the 1970s," in R. Ebel and H. Hrubecky, Eds., Perspectives on the Energy Crisis (New Orleans, 1976).

Co-author with William Reinsch, "Reforming the Foreign Corrupt Practices Act," The Corporate Board (May/June, 1985), pp. 15-18.

Political affiliations and activities: List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

none

Political contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

none

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

yes

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

no

3. Has anybody made you a commitment to a job after you leave government?

no

4. Do you expect to serve the full term for which you have been appointed?

yes

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

none

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

none

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

none

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

none

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

does not apply

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

none

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

none

ADDENDUM "A"

QUALIFICATIONS

In my position as economist on first the minority and then the majority staff of the Subcommittee on International Finance and Monetary Policy of the Senate Banking Committee I have been privileged to participate in a number of the major trade issues of the past six years. The revision of the Foreign Corrupt Practices Act, rechartering of the Export-Import Bank, increases in the International Monetary Fund quota, and work on the International Lending Supervision Act and the Export Trading Company Act of 1982 have sensitized me to the critical role which trade plays in the American economy. Those issues, plus hearings on a number of other important trade issues that I have organized, have helped me to understand the context in which any Assistant Secretary for Trade Administration must operate.

Most importantly, with regard to export control issues, I have helped to draft both the Export Administration Act of 1979 and the Export Administration Amendments Act of 1985. The process of drafting and staffing Committee members during the legislative process that led to the passage of those two Acts enabled me to fully appreciate the complexity and critical importance of export controls to our nation. America's ability to protect its technological lead over its potential adversaries, the strength and economic viability of some of our most productive and innovative high technology companies, and the question of the President's prerogatives and ability to pursue foreign policy and national security goals, all of these questions had to be considered and weighed against one another during the process of the Act's passage.

Finally, I would note that my experience on Capitol Hill has helped me to understand that the Executive Branch, in general, and the Commerce Department, in particular, makes its decisions in a political environment. Thus, good policy-making is inextricably bound up in consensus building. This is true for trade and export control issues as much as any decisions with which Administration officials have to face, and I will endeavor to gain that consensus for all major decisions in which I participate.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR MATTINGLY

FROM

DR. PAUL H. FREEDENBERG

QUESTION:

Other than the creation of a $300 million fund to be used to facilitate mixed credit export financing, what specific actions will be taken in the immediate future to implement the President's "new" trade policy initiative?

ANSWER:

In addition to the creation of a $300 million fund, which will be used to combat predatory mixed credit export financing by certain trading partners, numerous actions either have been taken or will be taken in the immediate future to implement the President's "new" Trade Policy Action Plan.

Unfair Foreign Trade Practices

- The Administration is committed to vigorously enforcing our trade laws to eliminate unfair trade practices. This commitment is illustrated by the recent self-initiation of Section 301 cases against Korea (insurance), Brazil (computers), and Japan (tobacco) and the acceleration of cases already underway against Japan (leather) and the EC (canned fruit). These are the first cases ever self-initiated by the U.S. Government under Section 301. Self-initiating these cases should send a strong signal to our trading partners that we will not tolerate unfair trade practices.

- On October 16, the President announced that he was instructing USTR to begin an investigation of an additional unfair trade practice: Korea -- protection of intellectual property rights. At that time,

the President also announced that he was instructing USTR to initiate proceedings under the General Agreement on Tariffs and Trade (GATT) against the wheat export subsidies offered by the European Community.

- The President has also established a Strike Force to identify unfair foreign trade practices and take the actions necessary to counter and eliminate such practices. The Strike Force is chaired by Secretary Baldrige and made up of representatives of all federal agencies with an interest in trade policy issues. The Strike Force has already begun the process of identifying unfair foreign trade practices and non-tariff barriers to trade.

- These actions are only a start. We will take other actions, where appropriate, to ensure that countries live up to their international obligations and trade agreements with the United States. The President has sufficient authority under Section 301 to take appropriate retaliatory actions if these cases cannot be resolved.

Intellectual Property Rights

- The President has directed that USTR initiate and accelerate both bilateral and multilateral negotiations with countries where the piracy of U.S. goods has occurred. The Administration is also increasing efforts to protect intellectual property rights. The Strike Force is presently considering what further actions may be taken in this area. In addition, the Administration will work with

the Congress to appropriate legislation to protect U.S. intellectual property rights, including protecting against trade in articles that infringe U.S. process patents, longer terms for agricultural chemical patents, and amending Section 337 of the 1930 Tariff Act.

Export Promotion

- The Commerce Department is currently reviewing its export promotion activities with a view toward strengthening them and increasing private sector involvement. The US&FCS is also working with state governments interested in expanding their export promotion activities.

Consultations with Foreign Countries

- The Administration is pursuing various bilateral initiatives designed to improve the trade environment and reduce the trade deficit. Talks with Japan and other countries are currently underway to open their markets to U.S. exports. The President has directed the Secretary of State to seek time limits on th so-called MOSS (market oriented, sector-specific) discussions now underway with Japan, at the end of which specific commitments will be evaluated and follow-up procedures begun. We are beginning to see some success.

- The Administration is continuing to seek the support of our trading partners for a New Round of Multilateral Trade Negotiations. The launching of a new round of multilateral trade negotiations is necessary to restore discipline to the international trading system and

promote trade liberalization. A new trade round would not only improve the functioning of the General Agreement on Tariffs and Trade (GATT) but would also extend GATT discipline to other sectors not adequately covered, such as trade in services, agriculture and high technology goods.

Economic Conditions

The President's initiative is not limited to trade policy per se. We have agreed to work with other major industrial countries to bring about a more realistic alignment of our currencies and to take specific steps to encourage non-inflationary domestic growth. Our foremost domestic challenge is to reduce the budget deficit. These steps are essential to improving our trade prospects.

INTERVENTION TO LOWER DOLLAR'S VALUE: INFLATIONARY IMPACT

QUESTION:

In view of the September 22nd Group-of-Five communique, what is the likely inflationary impact of foreign exchange intervention? Will intervention benefit our trade position and if so, where will the benefits first appear? Will such benefits outweigh inflationary costs?

ANSWER:

The impact that foreign exchange intervention will have on our trade position and outlook for inflation largely depends upon its success in strengthening foreign currencies against the dollar.

Between September 20 (prior to announcement of the Group-of-Five communique) and October 4 (when the ministers met again in Seoul, Korea), the Japanese and other central banks sold about $4 billion with largely successful results--the dollar fell 11.1 percent against the Japanese yen, 7.6 percent against the West German mark and 3.3 percent against the British pound. Since that time the dollar has depreciated further against the yen, and maintained its level vis-a-vis other major currencies.

A moderate fall in the value of the dollar could have some inflationary effects. Dollar import prices will tend to rise over time as foreign suppliers are unwilling or unable to make offsetting reductions in local currency prices. Rising world demand for U.S. products could also contribute

to inflationary pressures, especially in product sectors that are already operating at near capacity and that use substantial amounts of imported intermediate goods.

To the extent that intervention is successful in lowering the dollar's value, our trade position will improve--in time. Our export situation is likely to show the fastest and most substantial improvement. Imports will respond more sluggishly, in part because a significant percentage of U.S. import contracts are denominated in dollars, e.g., U.S. oil imports.

A moderate dollar decline can contribute to a reduction in our external deficits. However, there are no viable quick fixes that will produce a balanced trade account in the short-term. A lasting solution to our trade deficit involves more than a lower dollar--it also involves reducing domestic budget deficits, eliminating unfair trade practices abroad, and improving the efficiency of our markets.

NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS
P.O. Box 3769 Washington, DC 20007
(703) 522-4770

October 1, 1985

The Honorable Jake Garn
Chairman
Senate Committee on Banking,
Housing and Urban Affairs
SD 534
Washington, DC 20510

Dear Chairman Garn:

Tomorrow, the Senate Banking Committee will hold confirmation hearings on the nomination of Senator Roger Jepsen to the National Credit Union Administration Board for a term expiring August 2, 1987. President Reagan has indicated that following confirmation, he will designate the Senator as chairman of the NCUA Board.

On behalf of the National Association of Federal Credit Unions, I strongly support the candidacy of Senator Jepsen to the NCUA Board. By way of background, NAFCU is the only national trade organization exclusively representing the interests of the nation's more than 10,300 Federal credit unions. Over 30 million members belong to Federal credit unions that have assets of $72 billion.

Since his nomination by the President in April, we have found the Senator to be articulate, concerned and conscientious. Also, we believe he is committed to serving the best interests of credit unions regulated by NCUA. Further, as a member of a credit union for several years, he has a unique understanding of the distinct character of credit unions. In addition, his experience as a public official, most recently as a member of the United States Senate representing Iowa, afforded him an opportunity to develop leadership skills, which we believe he will bring to bear in his role as chairman of the NCUA Board.

In closing, we appreciate the opportunity to offer our support for the nomination of Senator Jepsen and urge the committee to report his nomination favorably as swiftly as possible.

Sincerely,

Robert A. Hess
President

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